TEXAS REGISTER

Volume 35 Number 41 *October 8, 2010* *Pages 9003 – 9166*

Devin McQueen
10th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register,*** 136 Carlin Rd., Conklin, N.Y. 13748-1531.

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

http://www.sos.state.tx.us
register@sos.state.tx.us

In This Issue

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for September 21, 2010

Appointed to the Finance Commission of Texas for a term to expire February 1, 2012, Hilliard Judge "Jay" Shands, III of Lufkin (replacing Riley Couch of Frisco who resigned).

Appointed to the Golden Crescent Regional Review Committee for a term at the pleasure of the Governor, David L. Huseman of Gonzales (replacing Bobby O'Neal of Gonzales).

Appointed to the Gulf Coast Waste Disposal Authority Board of Directors for a term to expire August 31, 2012, Randy Jarrell of Crystal Beach (reappointed).

Appointed to the Gulf Coast Waste Disposal Authority Board of Directors for a term to expire August 31, 2012, Lamont Meaux of Stowell (reappointed).

Appointed as Presiding Judge of the Seventh Administrative Judicial Region for a term to expire four years from the date of qualification, Morton Valdean Rucker, II of Midland. Judge Rucker is being reappointed.

Appointed to the Commission on Uniform State Laws, effective September 30, 2010, for a term to expire September 30, 2016, Levi J. Benton of Houston (Judge Benton is being reappointed).

Appointed to the Commission on Uniform State Laws, effective September 30, 2010, for a term to expire September 30, 2016, Debra H. Lehrmann of Colleyville (Justice Lehrmann is being reappointed).

Appointed to the Commission on Uniform State Laws, effective September 30, 2010, for a term to expire September 30, 2016, Frank E. Perez of Brownsville (replacing C. Mike Godfrey of Austin whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2012, Luis F. De La Garza, Jr. of Laredo. Mr. De La Garza is being reappointed.

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2011, Roland L. Brown of Midlothian (replacing Michael Mount of Plano who resigned).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2012, Joe D. Campos of Dallas (Mr. Campos is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2012, Randall R. Childers of Hewitt (Mr. Childers is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2012, Amy Dempsey of Austin (Ms. Dempsey is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2012, Martin J. Garza of San Antonio (Mr. Garza is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2012, Mark Remmert of Liberty Hill (Mr. Remmert is being reappointed).

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2012, Jesse E. Rider of Tyler (Mr. Rider is being reappointed).

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2013, Diane Jelain Chubb of Austin (replacing Chris LaPlante of Austin who no longer qualifies).

Appointments for September 22, 2010

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2011, Rita E. Baca of El Paso (replacing Norma Webb of Midland who resigned).

Rick Perry, Governor

TRD-201005554

♦ ♦ ♦

Appointments

Appointments for September 24, 2010

Appointed to the Humanities Texas for a term to expire December 31, 2011, J. Bruce Bugg, Jr. of San Antonio (replacing Robert Kruckemeyer of Spring whose term expired).

Appointed to the Humanities Texas for a term to expire December 31, 2011, Pauline Peters of Dallas (replacing Linda Valdez of Rockport whose term expired).

Appointments for September 28, 2010

Appointed to the Texas Commission on Fire Protection for a term to expire February 1, 2013, Leonardo L. Perez of Brownsville (replacing Rhea Cooper of Lubbock who no longer qualifies).

Appointed to the One Call Board for a term to expire August 31, 2013, Joseph Berry of Pearland (reappointed).

Appointed to the One Call Board for a term to expire August 31, 2013, Barry Calhoun of Richardson (reappointed).

Appointed to the One Call Board for a term to expire August 31, 2013, Judith Devenport of Midland (reappointed).

Appointed to the One Call Board for a term to expire August 31, 2013, John Linton of McAllen (reappointed).

Rick Perry, Governor

TRD-201005608

♦ ♦ ♦

Proclamation 41-3243

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, issued an Emergency Disaster Proclamation on September 9, 2010, as Tropical Storm Hermine posed a threat of imminent disaster to the state's southernmost counties, the central Texas corridor and portions of North Texas;

WHEREAS, Tropical Storm Hermine's flash flooding events caused substantial destruction in the counties listed below;

WHEREAS, the effects of Tropical Storm Hermine continue to create a state of disaster for people in the State of Texas;

WHEREAS, the state of disaster includes the counties of Bell, Blanco, Cameron, Coryell, Denton, Hill, Jim Wells, Johnson, Medina, Tarrant, Travis, Willacy and Williamson;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation to include the counties listed above and direct that all necessary measures, both public and private, as authorized under Section 418.017 of the code be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

The renewal of the disaster proclamation becomes effective immediately and shall remain in effect for 30 days, unless renewed or terminated. In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 20th day of September, 2010.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-201005552

♦ ♦ ♦

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinion

RQ-0917-GA

Requestor:

The Honorable Paul Johnson

Denton County Criminal District Attorney

Post Office Box 2850

Denton, Texas 76202

Re: Whether information in a pre-sentence investigation report may be released to the Department of Family & Protective Services under particular circumstances (RQ-0917-GA)

Briefs requested by October 25, 2010

RQ-0918-GA

Requestor:

The Honorable Glenn Hegar

Chair, Sunset Advisory Commission

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Validity and enforceability of certain types of restrictive covenant (RQ-0918-GA)

Briefs requested by October 25, 2010

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201005595
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: September 28, 2010

♦ ♦ ♦

Opinions

Opinion No. GA-0799

The Honorable R. Kelton Conner

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

Re: Compensation of judges serving on a juvenile board (RQ-0861-GA)

S U M M A R Y

Pursuant to section 152.0034(b) of the Human Resources Code, the Hood County Commissioners Court has the authority to establish, increase, decrease, or eliminate the compensation paid to the judges serving on the Hood County Juvenile Board.

Opinion No. GA-0800

Mr. Steven C. McCraw, Director

Texas Department of Public Safety

Post Office Box 4087

5805 North Lamar Boulevard

Austin, Texas 78773-0001

Re: Whether the exemption for a person engaged exclusively in the business of repossessing property, provided by section 1702.324(b)(3) of the Occupations Code, applies only to investigative services or to all services regulated under the Private Security Act (RQ-0862-GA)

S U M M A R Y

The Private Security Act provides for licensing and regulating investigations companies and security service providers, which include locksmiths. Repossession agents are exempted from licensing under the Act for investigative and security services, but only while "performing services directly related to and dependent on the provision of the exempted service that does not otherwise require licensing under" the Act. TEX. OCC. CODE ANN. §1702.324(c) (West Supp. 2010). This exemption applies to security services as well as investigative services. Whether any locksmith services are "directly related to and dependent on the provision of" repossession services involves questions of fact, which cannot be addressed in an attorney general opinion.

Opinion No. GA-0801

The Honorable Ronald D. Hankins

Somervell County Attorney

204 West Elm Street

Glen Rose, Texas 76043

Re: Whether an individual or company in the business of breeding certain birds, rats, mice, hamsters and similar animals for sale to pet shops may register a vehicle or trailer used to transport the animals as a "farm vehicle" under section 502.163 of the Transportation Code (RQ-0863-GA)

S U M M A R Y

Section 502.163 of the Transportation Code does not authorize the owner of a vehicle used to transport non-poultry birds, rats, mice, hamsters, and similar animals for sale to pet shops to register the vehicle as a "farm vehicle" under the statute.

Opinion No. GA-0802

The Honorable Frank J. Corte Jr.

Chair, Committee on Defense and Veterans' Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an abortion facility may use either a prerecorded telephone message or a one-way conference call to furnish the information required to be provided by section 171.012 of the Health and Safety Code (RQ-0858-GA)

S U M M A R Y

While the statutory text is ambiguous, a court would likely conclude that an abortion facility may not use either a prerecorded telephone message or a one-way conference call to furnish the information required to be provided to the patient by section 171.012 of the Health and Safety Code.

Opinion No. GA-0803

The Honorable Frank J. Corte Jr.

Chair, Committee on Defense and Veterans' Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a facility must have a license to perform medical abortions, and whether drugs to induce an abortion must be ingested in the presence of the prescribing physician (RQ-0859-GA)

S U M M A R Y

Except as expressly exempted, chapter 245, Health and Safety Code, requires an abortion facility to be licensed. The prescribing or providing of a drug, not otherwise excluded as a birth control device or oral contraceptive, and done with the requisite intent to terminate a medically verified pregnancy, may be an abortion under section 245.002(1). Whether the prescribing or providing of a particular drug is an abortion is a fact question that must be determined by the Texas Department of State Health Services in the first instance.

Texas statutes do not require a patient to ingest drugs that are provided to the patient with the intent to induce an abortion in the presence of the prescribing physician.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201005606
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: September 28, 2010

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-556. The Texas Ethics Commission has been asked to consider whether a board member of a state agency may testify as an expert witness regarding whether a person had committed a violation of laws, rules, or standards within the jurisdiction of the agency.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201005500
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: September 22, 2010

♦ ♦ ♦

Advisory Opinion Request

AOR-557. The Texas Ethics Commission has been asked to consider whether a person must maintain an active campaign treasurer appointment to receive a refund of a campaign expenditure made from personal funds or to make an expenditure to obtain the refund.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201005553
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: September 24, 2010

♦ ♦ ♦

Advisory Opinion Request

AOR-558. The Texas Ethics Commission has been asked to consider whether communication relating to a measure election comply with section 255.003 of the Election Code.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201005607
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: September 29, 2010

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1039

The Texas Education Agency (TEA) proposes new §61.1039, concerning open-enrollment charter school facilities credit enhancement. The proposed new section would allow the commissioner to implement and administer the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter J, as added by Section 75 of House Bill 3646, 81st Texas Legislature, 2009, which allows for the establishment of an open-enrollment charter school facilities credit enhancement program.

Section 75 of House Bill 3646, 81st Texas Legislature, 2009, added the TEC, Chapter 45, Subchapters I and J. Subchapter J allows for the establishment of a charter school facilities credit enhancement program to help charter holders obtain financing to purchase, repair, or renovate real property for facilities. TEC, §45.308, requires the commissioner to adopt rules to administer the program if the commissioner establishes the program.

The proposed new 19 TAC §61.1039 would set out the statutory provisions for the credit enhancement program, provide definitions, and explain the requirements of and policies related to the program's application and approval process. The proposed new rule would also provide limitations on access to the program and explain program payment conditions and restrictions.

A charter holder that wished to receive the credit enhancement for its bonds would have to submit an application for the enhancement that included the following: the name of the charter holder and the principal amount of the bonds to be issued; the name and address of the charter holder's paying agent for those bonds; and the maturity schedule, estimated interest rate, and date of the bonds. An applicant charter holder would also be required to submit any additional information related to the bonds that the commissioner specifically requested to make an approval determination. A charter holder that was applying for credit enhancement of refunding bonds would have to provide evidence that issuing the refunding bonds would result in a present value savings and that the refunding bonds did not have a maturity date later than the final maturity date of the bonds being refunded.

A charter holder that received initial credit enhancement approval would be required to provide a written notice by facsimile or email to the TEA two working days before issuing a preliminary official statement (POS) for the bonds that would be eligible for the credit enhancement or two business days before soliciting investment offers, if the bonds would be privately placed without the use of a POS.

A charter holder that then received confirmation from the TEA that program capacity continued to be available would be required to provide written notice to the TEA of the placement of an agenda item on a meeting of the charter holder's board of directors to approve the bond sale no later than two business days before the meeting. If the bond sale were to be completed pursuant to a delegation by the charter holder to a pricing officer or committee, notice would be required to be given no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

A charter holder that issued bonds approved for the credit enhancement would be required to have its independent auditor confirm in the charter holder's annual financial report that bond funds had been used in accordance with the purpose specified in the application. This data collection requirement will be added to the Financial Accountability System Resource Guide.

The proposed rule action would have no locally maintained paperwork requirements.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the new section is in effect there will be no additional costs for state government as a result of enforcing or administering the new section, but there would be fiscal implications for local government, which are charter holders. The fiscal implications for charter holders would not be beyond what is imposed by the authorizing statute. Any costs to charter holders to participate in the intercept credit enhancement program would be outweighed by the program's benefits.

Administration of the program would provide charter holders with access to low-cost bonds. Potential savings to charter holders are impossible to estimate at this time. Charter holders that would be approved to issue bonds with the benefit of the credit enhancement provided by the intercept credit enhancement program would experience a savings in two ways. First, the credit enhancement would be provided at a cost lower than that for private bond insurance. Second, charter holders would be able to get lower interest rates on bonds that had a credit enhancement than they could otherwise get. Actual savings would be influenced by the unique circumstances of each charter holder that proposed to issue bonds, including the market's assessment of the charter holder's financial condition and the cost and availability of private bond insurance.

Ms. Beaulieu has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be a proposed credit enhancement program to help charter holders obtain financing for

the purchase, repair, or renovation of real property for facilities. Students at open-enrollment charter schools would benefit from improved school facilities. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 8, 2010, and ends November 8, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 8, 2010.

The new section is proposed under the Texas Education Code, Chapter 45, Subchapter J, §45.302 and §45.308, which authorize the commissioner to adopt rules to establish and administer the open-enrollment charter school facilities credit enhancement program. TEC, §45.303, authorizes the commissioner, in adopting rules under TEC, §45.302, to limit participation in the program to open-enrollment charter schools that meet standards established by the commissioner, including standards for financial stability, compliance with applicable state and federal program requirements, and student academic performance.

The new section implements the Texas Education Code, Chapter 45, Subchapter J.

§61.1039. Open-Enrollment Charter School Bond Enhancement Program.

(a) Statutory provision. The commissioner of education must administer the open-enrollment charter school facilities credit enhancement program according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter J.

(b) Definitions. The following definitions apply to the open-enrollment charter school facilities credit enhancement program.

(1) Amortization expense--The annual expense of any debt and/or loan obligations.

(2) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during a fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the open-enrollment charter holder has outstanding bonded indebtedness.

(A) The existing annual debt service will be determined by the current report of the bonded indebtedness of the open-enrollment charter holder as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement.

(C) Annual debt service includes required payments into a sinking fund as authorized under 26 United States Code (USC) §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.

(3) Application deadline--The last business day of the month in which an application for a credit enhancement is filed. Applications must be received by the Texas Education Agency (TEA) division responsible for state funding by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.

(4) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.

(5) Board resolution--The resolution adopted by the governing body of an open-enrollment charter holder that:

(A) requests credit enhancement of bonds through the Open-Enrollment Charter School Bond Enhancement Program; and

(B) authorizes the charter holder's administration to pursue bond financing.

(6) Bond resolution--The resolution adopted by the governing body of an open-enrollment charter holder that authorizes the issuance of bonds.

(7) Combination issue--An issuance of bonds for which an application is filed for a credit enhancement that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the credit enhancement is limited by the eligibility of the new money and refunding portions as defined in this subsection.

(8) Debt service coverage ratio--A measure of an open-enrollment charter holder's ability to pay interest and principal with cash generated from current operations. The debt service coverage ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses plus interest expense plus depreciation expense plus amortization expense, all divided by maximum annual debt service. The calculation can be expressed as: (Excess of revenues over expenses + interest expense + depreciation expense + amortization expense) / Maximum annual debt service.

(9) Depreciation expense--The audited amount of depreciation that was expensed during the fiscal period.

(10) Existing annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought as reported by the MAC of Texas or its successor, if the open-enrollment charter holder has outstanding bonded indebtedness.

(A) The existing annual debt service will be determined by the current report of the bonded indebtedness of the open-enrollment charter holder as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) The existing annual debt service does not include:

(i) the amount of debt service to be paid on the bonds for which the reservation is sought; or

(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.

(C) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement.

(D) Annual debt service includes required payments into a sinking fund as authorized under 26 USC §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other

entity approved by the commissioner that is not under the control or common control of the charter holder.

(11) Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state appropriated funding for school districts in the state of Texas.

(12) Maximum annual debt service--As of any date of calculation, the highest annual debt service requirements with respect to all outstanding debt for any succeeding fiscal year.

(13) New money issue--An issuance of revenue bonds for the purposes of the purchase, repair, or renovation of real property, including improvements to real property, for an instructional facility, as that term is defined in the TEC, §46.001, of an open-enrollment charter school and for purposes of equipping real property of an open-enrollment charter school. Eligibility for the credit enhancement for new money issues is limited to the issuance of bonds authorized under the TEC, Chapter 53. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the open-enrollment charter holder or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A.

(14) Open-enrollment charter--This term has the meaning assigned in §100.1011 of this title (relating to Definitions).

(15) Open-enrollment charter holder--This term has the meaning assigned to the term "charter holder" in the TEC, §12.1012.

(16) Open-enrollment charter school--This term has the meaning assigned to the term "charter school" in §100.1011 of this title.

(17) Open-Enrollment Charter School Bond Enhancement Program (CSBEP)--The program to provide credit enhancement for open-enrollment charter school bonds that is described by this section and established under the TEC, Chapter 45, Subchapter J.

(18) Open-enrollment charter school campus--This term has the meaning assigned to the term "charter school campus" in §100.1011 of this title.

(19) Proposed annual debt service--Payments of principal and interest on the outstanding bonded debt for which the enhancement is sought scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought and each fiscal year for which the credit enhancement is or would be in effect as described in the amortization schedule for the bonded debt for which the enhancement is sought. Annual debt service includes required payments into a sinking fund as authorized under 26 USC §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.

(20) Refunding issue--An issuance of bonds for the purpose of refunding bonds that have previously been issued under the TEC, Chapter 53, and have previously been approved by the Office of the Attorney General.

(21) School year--The period beginning the fourth Monday of August of the current calendar year and ending the Sunday before the fourth Monday of August of the following calendar year.

(c) Eligibility to apply for the credit enhancement.

(1) To have its application for the credit enhancement considered, an open-enrollment charter holder must:

(A) have operated at least one open-enrollment charter school in the state of Texas for at least three years;

(B) identify in its application for which open-enrollment charter school and, if applicable, for which open-enrollment charter school campus the bond funds will be used;

(C) in its application, agree that the bonded indebtedness for which the credit enhancement is sought will be undertaken as an obligation of all tax-exempt entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness;

(D) not be considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation; and

(E) not have an unresolved corrective action that is more than one year old, unless the open-enrollment charter holder has taken appropriate steps to begin resolving the action.

(2) For an open-enrollment charter holder to have its application for the credit enhancement considered, all open-enrollment charter schools operated under the charter must not have an accreditation rating of Not Accredited-Revoked and must have ratings of acceptable or higher as their most recent state academic accountability ratings.

(d) Criteria to be met for open-enrollment charter holder to receive initial approval.

(1) In determining whether an open-enrollment charter holder applicant is eligible to receive initial approval for the credit enhancement, the commissioner will investigate the financial status of the applicant open-enrollment charter holder and the accreditation status of all open-enrollment charter schools operated under the charter. All the open-enrollment charter schools operated under the charter must be accredited and the open-enrollment charter holder must be financially sound for the open-enrollment charter holder's application to be eligible for initial approval by the commissioner. The commissioner's review will include review of the following:

(A) the purpose of the bond issue;

(B) the accreditation status, as defined by §97.1055 of this title (relating to Accreditation Status), of all open-enrollment charter schools operated under the charter in accordance with the following:

(i) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the open-enrollment charter holder will be eligible for consideration for the credit enhancement;

(ii) if the accreditation status of any open-enrollment charter school operated under the charter is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the open-enrollment charter holder will not be eligible for consideration for the credit enhancement; or

(iii) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited-Revoked, the open-enrollment charter holder will not be eligible for consideration for the credit enhancement;

(C) the open-enrollment charter holder's financial status and stability, regardless of each open-enrollment charter school's accreditation rating, including approval of the bonds by the Office of the Attorney General under the provisions of the TEC, §53.40;

(D) the audit history of the open-enrollment charter holder and of all open-enrollment charter schools operated under the charter;

(E) the open-enrollment charter holder's compliance with statutes and rules of the TEA and with applicable state and federal program requirements and the compliance of all open-enrollment charter schools operated under the charter with these statutes, rules, and requirements;

(F) any interventions and sanctions to which the open-enrollment charter holder has been subject; to which any of the open-enrollment charter schools operated under the charter has been subject; and, if applicable, to which any of the open-enrollment charter school campuses operated under the charter has been subject;

(G) complaints made against the open-enrollment charter holder, against any of the open-enrollment charter schools operated under the charter, or against any of the open-enrollment charter school campuses operated under the charter;

(H) the state academic accountability rating of all open-enrollment charter schools operated under the charter and the campus ratings of all open-enrollment charter school campuses operated under the charter; and

(I) any unresolved corrective actions that are less than one year old.

(2) For an open-enrollment charter holder to receive initial approval for credit enhancement:

(A) the applicant open-enrollment charter holder's lowest credit rating from any credit rating agency may not be the same as or higher than that of the CSBEP;

(B) the bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in subsection (b)(19) of this section, for the term of the bonds by the number of years in the amortization schedule; and

(C) the open-enrollment charter holder must agree, in its application, that payments of all of the principal of the bonds will be scheduled during the first six months of the state fiscal year.

(3) To receive initial approval for credit enhancement of bonds to be issued for the purchase, repair, or renovation of real property, the open-enrollment charter holder must agree, in its application, to execute a lien or require the owner of the property, if different, to execute a lien on that real property in a form prescribed by the commissioner and approved by the Office of the Attorney General to secure repayment of all amounts due to the state from the open-enrollment charter holder, including reimbursement of any private funds paid on behalf of an open-enrollment charter school under this section. The lien must be filed in the real property records of each county in which the real property is located. In accordance with the TEC, §45.306, the lien has priority over any other claim against the real property except a lien granted to the holders of obligations issued to finance the acquisition of the real property and any security interest or lien existing before credit enhancement is provided under this section. The open-enrollment charter holder must disclose all existing liens, security interests, or other encumbrances on the real property to be purchased, renovated, or improved and on any improvements proposed for the real property in the application and confirm that no additional liens or encumbrances have been placed on the property before the signing and filing of the lien under this subsection.

(e) Limitations on access to the credit enhancement.

(1) The commissioner will limit approval of the credit enhancement to an open-enrollment charter holder with a historical debt service coverage ratio of at least 1.1 and a projected debt service coverage ratio of 1.25.

(2) The eligibility of bonds to receive the credit enhancement is limited to those new money, refunding, and combination issues as defined in subsection (b)(13), (20), and (7), respectively, of this section.

(3) To be eligible to receive the credit enhancement, bonds may not provide for acceleration of amounts of principal or interest not yet matured by virtue of a charter holder's failure to make payments or for any other reason.

(f) Application processing. To facilitate prioritization of applications for the credit enhancement, all applications received during a calendar month will be held until the twentieth business day of the subsequent month. On the twentieth business day of each month, the commissioner will announce the results of the prioritization described in paragraph (6) of this subsection, if prioritization was necessary, and process applications for initial approval of the credit enhancement up to the available capacity as of the application deadline, subject to the requirements of this subsection.

(1) The open-enrollment charter holder may not submit an application for a credit enhancement before the governing body of the open-enrollment charter holder adopts a board resolution as defined in subsection (b)(5) of this section.

(2) The actual credit enhancement of the bonds is subject to the initial approval process and the final approval process prescribed in subsection (g) of this section.

(3) Refunding issues must comply with the following requirements to retain eligibility for the credit enhancement for the refunding bonds.

(A) The open-enrollment charter school must have an accreditation status of Accredited as defined by §97.1055 of this title. If the open-enrollment charter school has an accreditation status of Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the refunding bonds will not be eligible to retain the credit enhancement. Open-enrollment charter schools with an accreditation status of Not Accredited-Revoked will not be eligible to retain the credit enhancement on the refunding bonds.

(B) The open-enrollment charter holder must demonstrate that issuing the refunding bond(s) will result in a present value savings to the open-enrollment charter holder and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Present value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings must be computed at the true interest cost of the refunding bonds.

(C) If an open-enrollment charter holder files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the credit enhancement. A credit enhancement for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the eligibility requirements described in this subsection. The open-enrollment charter holder making the application must present data to the

commissioner that demonstrates compliance for both the new money portion of the issue and the refunding portion of the issue.

(D) The refunding transaction must comply with the provisions of paragraphs (8) and (10) of this subsection.

(4) The commissioner in each month of each fiscal year will estimate the amount of funds available to make payments under the CSBEP from the FSP through the end of the fiscal year for purposes of providing initial approval to the credit enhancement of bonds issued by open-enrollment charter holders under this section. The commissioner will confirm that a sufficient amount of these funds exists to enhance the credit of the bonds before the issuance of the final approval for the credit enhancement in accordance with subsection (g)(4) of this section.

(5) Before approving the credit enhancement of bonds issued by open-enrollment charter holders under the CSBEP, the commissioner must:

(A) allocate not more than 1.0% of the amount appropriated for the FSP for purposes of the CSBEP; and

(B) make the determination described in paragraph (4) of this subsection.

(6) If prioritization of applications is necessary because of limited program capacity, the commissioner will prioritize applications for the credit enhancement in the following way.

(A) Applications from open-enrollment charter holders that have not had bonds issued previously will be considered before applications from open-enrollment charter holders that have had bonds issued previously.

(B) The commissioner first will prioritize by lottery all applications received from open-enrollment charter holders that have not had bonds issued previously.

(C) The commissioner then will prioritize by lottery all applications received from open-enrollment charter holders that have had bonds issued previously.

(7) An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting open-enrollment charter holder before the end of the subsequent month.

(8) Each open-enrollment charter holder that submits a valid application will be notified of the application status within 20 business days of the end of the month following the application deadline. If an open-enrollment charter holder is awarded initial approval for the credit enhancement as described in subsection (g)(3) of this section, the following requirements must be met.

(A) The open-enrollment charter holder must comply with the provisions for final approval described in subsection (g)(4) of this section to maintain approval for the credit enhancement.

(B) The bonds must be approved by the Office of the Attorney General within 270 days of the date of the letter granting the approval of the credit enhancement. The initial approval for the credit enhancement will expire at the end of the 270-day period. The commissioner may extend the 270-day period, based on extraordinary circumstances, on receiving a written request from the open-enrollment charter holder before the expiration of the 270-day period.

(9) If an open-enrollment charter holder does not receive a credit enhancement or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the open-enrollment charter holder may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.

(10) If the bonds are not approved by the Office of the Attorney General within 270 days of the date of the letter granting the approval of the credit enhancement, the commissioner will consider the application withdrawn, and the open-enrollment charter holder must reapply for a credit enhancement.

(11) An open-enrollment charter holder may not represent bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval of the credit enhancement.

(g) Application for the credit enhancement.

(1) Application process. Open-enrollment charter holders must apply to the commissioner for the credit enhancement of eligible bonds. The open-enrollment charter holder must submit, in a form specified by the commissioner, the information required under this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The application must be accompanied by a fee to be set by the commissioner.

(A) The fee is due at the time the application for the credit enhancement is submitted. An application will not be processed until the fee has been received in accordance with the process prescribed by the commissioner for remitting the fee on the application form.

(B) The fee will not be refunded to an open-enrollment charter holder that:

(i) is not approved for the credit enhancement; or

(ii) does not sell its bonds before the expiration of its approval for the credit enhancement.

(C) The fee may be transferred to a subsequent application for the credit enhancement by the open-enrollment charter holder if the open-enrollment charter holder withdraws its application and submits the subsequent application for the same charter school before the expiration of its initial approval for the credit enhancement.

(2) Application for the credit enhancement and charter renewal or amendment.

(A) If an open-enrollment charter holder applies for the credit enhancement during the school year in which the open-enrollment charter holder's charter is due to expire, application approval will be contingent on successful renewal of the charter, and the bonds for which the open-enrollment charter holder is applying for the credit enhancement may not be issued before the successful renewal of the charter.

(B) If an open-enrollment charter holder proposes to use the proceeds of the bonds for which it is applying for the credit enhancement for an expansion that requires a charter amendment, application approval will be contingent on approval of the amendment, and the bonds may not be issued before approval of the amendment.

(3) Initial approval. The TEA will notify an applicant of initial approval for the credit enhancement on the TEA's determination that the applicant has met all applicable requirements.

(4) Final approval. An open-enrollment charter holder must receive final approval before completing the sale of the bonds for which the open-enrollment charter holder has received notification of initial approval.

(A) An open-enrollment charter holder that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the credit enhancement or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The open-enrollment charter holder must receive written confirmation from the TEA that the available capacity of money allocated for the credit enhancement under this section continues to be available and must continue to meet the requirements of subsection (c) of this section before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) An open-enrollment charter holder that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an agenda item on a meeting of the open-enrollment charter holder's board of directors to approve the bond sale no later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the open-enrollment charter holder to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The open-enrollment charter holder must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the open-enrollment charter holder or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the open-enrollment charter holder expects to complete the sale by official action of the open-enrollment charter holder or of a pricing officer or committee.

(C) The TEA will process requests for final approval from open-enrollment charter holders that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) An open-enrollment charter holder may provide written notification as required by this paragraph by facsimile transmission or by electronic mail in a manner prescribed by the commissioner.

(h) Defeasance. The credit enhancement will be completely removed when bonds approved for credit enhancement by this CSBEP are defeased, and such a provision must be specifically stated in the bond resolution. If bonds approved for credit enhancement by this CSBEP are defeased, the open-enrollment charter holder must notify the commissioner in writing within ten calendar days of the action.

(i) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter J, matured principal and interest payments are limited to amounts due on bonds approved for credit enhancement at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the bond order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(j) Credit enhancement restrictions. The credit enhancement provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter J, is restricted to matured bond principal and interest. The credit enhancement does not extend to any obligation of an open-enrollment charter holder under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.

(k) Report on the use of funds and confirmation of use of funds by independent auditor. An open-enrollment charter holder that issues bonds approved for credit enhancement by the CSBEP must report to the TEA annually in a form prescribed by the commissioner on the use of the bond funds until all bond proceeds have been spent. The open-enrollment charter holder's independent auditor must confirm in the open-enrollment charter holder's annual financial report that bond funds have been used in accordance with the purpose specified in the application for the credit enhancement.

(l) Failure to comply with statute or this section. An open-enrollment charter holder's failure to comply with the requirements of the TEC, Chapter 45, Subchapter J, or with the requirements of this section, including by making any misrepresentations in the open-enrollment charter holder's application for the credit enhancement, constitutes a material violation of the open-enrollment charter holder's charter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 27, 2010.

TRD-201005565
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 97. PLANNING AND ACCOUNTABILITY
SUBCHAPTER DD. INVESTIGATIVE REPORTS, SANCTIONS, AND RECORD REVIEWS

19 TAC §§97.1031, 97.1033, 97.1035, 97.1037

The Texas Education Agency (TEA) proposes amendments to §§97.1031, 97.1033, 97.1035, and 97.1037, concerning investigative reports, sanctions, and record reviews. The sections define the procedures for required on-site investigations and reports and procedures for accreditation sanctions. The proposed amendments would update and clarify these procedures. The proposed amendments reflect changes in the Texas Education Code (TEC), Chapter 39, as reflected in House Bill (HB) 3, 81st Texas Legislature, Regular Session, 2009.

HB 3, 81st Texas Legislature, Regular Session, 2009, enacted numerous changes to the TEC, Chapter 39, and renumbered the chapter, requiring that existing rules be revised and updated.

The rules in 19 TAC Chapter 97, Planning and Accountability, Subchapter DD, Investigative Reports, Sanctions, and Record Reviews, define the procedures for on-site investigations and reports as required by TEC, §39.058, and procedures for accreditation sanctions under TEC, Chapter 39, Subchapter E, resulting from such reports. The rules provide for notice to any person whom the report finds to have committed a violation of law, rule, or policy and provide for an informal review of such findings before they may become final.

The proposed amendments to 19 TAC Chapter 97, Subchapter DD, would update and clarify existing rules in light of HB 3. Specifically, the proposed amendments would establish the following.

Section 97.1031, Preliminary Investigative Report, would be amended to update statutory references in alignment with HB 3. Additionally, language in subsection (b)(3), establishing a specific deadline for requesting an informal review of preliminary investigative findings, would be deleted to provide for individual consideration of an appropriate timeline in alignment with the nature of the findings.

Section 97.1033, Informal Review of Preliminary Investigative Report; Final Investigative Report, would be amended in subsection (b) to provide a minor technical update in alignment with the change made to §97.1031(b)(3).

Section 97.1035, Procedures for Accreditation Sanctions, would be amended to add a reference in subsection (a) to interventions for charter violations under §100.1023. In addition, subsection (d) would be revised to update statutory references in alignment with HB 3.

Section 97.1037, Record Review of Certain Decisions, would be amended to update statutory references in alignment with HB 3. Additionally, subsection (a)(5) would be deleted, as HB 3 added open-enrollment charter schools to the state's financial accountability rating system, which has a statutorily required appeals process.

The proposed amendments would have no new reporting implications. Changes to current procedures include the removal of a specified timeframe in 19 TAC §97.1031(b)(3) for requesting an informal review of findings to provide for individual consideration of an appropriate timeline. In addition, deletion of 19 TAC §97.1037(a)(5) would remove applicability of the record review requirement to an open-enrollment charter school financial finding in lieu of a financial accountability rating in accordance with HB 3 changes that made the financial accountability rating system, and its specified appeals process, applicable to open-enrollment charter schools. The proposed amendments would have no new locally maintained paperwork requirements.

Laura Taylor, associate commissioner for accreditation, has determined that for the first five-year period the amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments. The proposed rule actions would make minor procedural updates and update statutory references in alignment with HB 3, 81st Texas Legislature, Regular Session, 2009. The rule actions would assign no additional fiscal burden beyond what already is imposed by law.

Ms. Taylor has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be updated references and clarification of procedures for on-site investigations and reports and for accreditation sanctions resulting from such reports in light of HB 3. The proposed amendment to 19 TAC §97.1037 would continue to ensure that entities are afforded appropriate administrative review of certain accreditation sanctions and would continue to provide agency procedures for the conduct of such reviews. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 1, 2010, and ends November 1, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 1, 2010.

The amendments are proposed under the Texas Education Code (TEC), §39.058, which authorizes the agency to adopt written procedures for conducting on-site investigations under TEC, Chapter 39, Subchapter C, and requires that the agency provide an informal review of preliminary findings after completion of an investigation; and TEC, §39.152, which authorizes the agency to establish procedures for creating an administrative record for review by the State Office of Administrative Hearings for certain decisions.

The amendments implement the Texas Education Code, §39.058 and §39.152.

§97.1031. Preliminary Investigative Report.

(a) Findings resulting from an investigation under Texas Education Code (TEC), Chapter 39, Subchapter C [~~D~~], must be presented in a preliminary investigative report.

(1) The following are not findings resulting from an investigation under TEC, Chapter 39, Subchapter C [~~D~~], and need not be presented in a preliminary investigative report:

(A) an academic accountability rating assigned under §97.1001 of this title (relating to Accountability Rating System);

(B) a financial accountability rating assigned under §109.1002 of this title (relating to Financial Accountability Ratings); or

(C) a determination of adequate yearly progress under §97.1004 of this title (relating to Adequate Yearly Progress).

(2) A rating or determination initially issued under paragraph (1) of this subsection may be lowered or changed as a result of an investigation under TEC, Chapter 39, Subchapter C [~~D~~]. In this event, the new rating or determination is a finding resulting from an investigation and must be presented in a preliminary investigative report.

(b) Before issuing a final investigative report, the Texas Education Agency (TEA) must notify the person whom the TEA proposes to find has violated a law, rule, or policy. The notice must be in writing and must:

(1) include a copy of a preliminary investigative report finding that the person has violated a law, rule, or policy;

(2) state the procedures for obtaining an informal review of the findings in the preliminary investigative report under TEC, §39.058(b) [~~§39.076(b)~~], including the name and department of the person to whom the request may be addressed; and

(3) set a deadline[~~, which shall not be less than ten calendar days from the date of mailing of the preliminary investigative report,~~] for requesting an informal review of such findings.

§97.1033. Informal Review of Preliminary Investigative Report; Final Investigative Report.

(a) (No change.)

(b) A written request for informal review of the preliminary investigative report must be addressed to the Texas Education Agency (TEA) representative identified in the notice under §97.1031(b)(2) of this title (relating to Preliminary Investigative Report). The written request must be received by the TEA representative on or before the deadline set under [~~specified in~~] §97.1031(b)(3) of this title.

(c) - (f) (No change.)

§97.1035. Procedures for Accreditation Sanctions.

(a) The commissioner of education shall notify the school district or open-enrollment charter school in writing of a sanction imposed under Subchapter EE of this chapter (relating to Accreditation Status, Standards, and Sanctions), §100.1023 of this title (relating to Intervention Based on Charter Violations), or [~~and~~] this section. The notice must state the basis for finding that the district or open-enrollment charter school does not satisfy the applicable [~~accreditation~~] criteria as indicated in Subchapter EE of this chapter or §100.1023 of this title. The finding(s) may be made in the notice or in a final investigative report, or based on a final investigative report.

(b) - (c) (No change.)

(d) The commissioner shall annually review a sanction imposed under subsection (a) of this section and shall increase the sanction, as required by TEC, §39.108 [~~§39.133~~]. The commissioner shall quarterly review the need for a conservator or a management team imposed under Subchapter EE of this chapter, as required by TEC, §39.111 [~~§39.135~~]. If reviews are required under both TEC, §39.108 [~~§39.133~~] and §39.111 [~~§39.135~~], a quarterly review under TEC, §39.111 [~~§39.135~~], may satisfy the annual review under TEC, §39.108 [~~§39.133~~]. An annual or quarterly review is not subject to the requirements of this section or §97.1057 of this title.

§97.1037. Record Review of Certain Decisions.

(a) Applicability. This section applies only to:

(1) a notice under §97.1035 of this title (relating to Procedures for Accreditation Sanctions) proposing to order:

(A) alternative management of a school district campus or a charter school campus under Texas Education Code (TEC), §39.107 [~~§39.1327~~];

(B) closure of a school district or an open-enrollment charter school under TEC, §§39.052 [~~§§39.071(c)~~], 39.102 [~~39.131(a)~~], or 39.104 [~~39.1321(c)~~]; or

(C) closure of a school district campus or charter school campus under TEC, §39.107 [~~§39.1324 or §39.1327~~];

(2) assignment under §97.1055 of this title (relating to Accreditation Status) of an accreditation status of Accredited-Warned or Accredited-Probation;

(3) assignment of a board of managers under TEC, §39.112 [~~§39.136~~] and §39.102 [~~§39.131(a)(9)~~], or TEC, §39.107 [~~§39.1324(c)~~]; or

(4) request for review of an over-allocation from an open-enrollment charter school granted by the commissioner of education under §100.1041(e) of this title (relating to State Funding).[~~; or~~]

[~~(5) request for record review of a charter school accreditation finding under §97.1055(g) of this title from an open-enrollment charter school.~~]

(b) Notice. Notice of a proposed order subject to this section shall be made as provided by §97.1035 [~~§97.1035(d)~~] of this title and this section.

(1) - (3) (No change.)

(c) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005514
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1072

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1072 is not included in the print version of the Texas Register. The figure is available in the on-line version of the October 8, 2010, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes new §97.1072, concerning residential facility monitoring. The proposed new section would implement the requirements of the Texas Education Code (TEC), the Individuals with Disabilities Education Improvement Act (IDEA 2004) Amendments of 2004, and 34 Code of Federal Regulations (CFR), which require the agency to adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education. Specifically, the proposal would establish procedures for the administration of residential facility (RF) monitoring for public school districts and open-enrollment charter schools related to programs provided to students with disabilities residing in RFs. The proposal would also adopt in rule the Residential Facility Monitoring (RFM) Manual, dated August 2010.

On April 15, 2004, the United States District Court issued a decision in the *Angel G. v. Texas Education Agency* lawsuit and found that the TEA must develop a new monitoring system to ensure that students with disabilities residing in RFs received a free, appropriate public education (FAPE). On May 17, 2004, the TEA filed a Notice of Appeal in the United States Court of

Appeals for the Fifth Circuit. During the pendency of the appeal, the parties agreed to the entry of a consent decree to resolve the disputes and to achieve a common goal of developing and implementing an effective monitoring system. The consent decree was filed with the District Court on August 8, 2005, and will automatically expire on December 31, 2010, given that neither party requested that the District Court extend the term of the consent decree.

The TEA began implementing the consent decree during the 2005-2006 school year by hiring and training RF monitoring staff and developing required products and data collection systems. During the 2006-2007 school year, the TEA completed initial development of the RF monitoring system in accordance with the terms of the consent decree, and on-site RF monitoring visits under the terms of the consent decree began. For the subsequent school years of 2007-2008, 2008-2009, and 2009-2010, the TEA continued to implement the monitoring system required under the consent decree.

While the *Angel G.* consent decree will expire on December 31, 2010, the TEA has identified an ongoing need to oversee and monitor the programs provided to students with disabilities who reside in RFs. Therefore, the commissioner proposes through this rule adoption to implement a system of RF monitoring after the expiration of the consent decree.

Proposed new 19 TAC §97.1072, Residential Facility Monitoring; Determinations, Investigations, and Sanctions, would establish a RFM system through which the TEA will meet its federal and state special education monitoring obligations for the RF population. The proposed new section would establish a data collection system for RFM and the general criteria used to determine which districts would be subject to RFM activities. The proposed new section also would describe the graduated monitoring activities that would comprise the RFM system and possible interventions and/or sanctions that may be implemented under the system. Furthermore, the proposal would adopt in rule an RF monitoring manual to define RF districts subject to the RFM system and establish specific criteria, standards, and procedures for implementing the RFM system.

The proposed rule action would have no new reporting implications. Consistent with current procedures, districts subject to the RFM system would have a continuing obligation to submit data regarding RF students with disabilities to the TEA. Districts and campuses would have continued reporting obligations related to required interventions and sanctions under this proposal. However, the TEA would seek to reduce, to the extent possible, the data reporting obligations previously associated with the requirements of the consent decree. The proposed rule action would have no new locally maintained paperwork requirements. Districts will continue to be required to maintain documentation related to completion of required RFM intervention activities and/or implementation of any required RFM sanctions.

Laura Taylor, associate commissioner for accreditation, has determined that for the first five-year period the new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the new section. The proposed rule action would modify and continue a monitoring system that has been implemented under the terms of the *Angel G.* consent decree since the 2006-2007 school year and that is required to continue to ensure compliance with state and federal special education laws. The proposed rule action would assign no additional fiscal burden beyond what already is imposed by law or the previous consent decree.

Ms. Taylor has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be standards and procedures for monitoring the special education programs provided to students with disabilities residing in RFs. In addition, the proposed rule action would provide for the implementation of sanctions and interventions to improve district performance and compliance with federal and state special education requirements for a unique and vulnerable population of students who often have limited access to family members who can advocate for their educational needs. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 1, 2010, and ends November 1, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 1, 2010.

The new section is proposed under the Texas Education Code, §29.010, which authorizes the agency to adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education; Title 34 Code of Federal Regulations (CFR) §300.149, which requires the agency to have in effect policies and procedures to ensure that it meets its general supervision responsibilities related to the education of children with disabilities and complies with monitoring and enforcement requirements under Part B of the Individuals with Disabilities Education Act (IDEA) and implementing regulations; and Title 34 CFR §300.600, which requires the agency to monitor the implementation and enforce the requirements of IDEA, Part B, including monitoring of local education agencies to improve educational results and functional outcomes for children with disabilities and ensure that program requirements are met.

The new section implements the Texas Education Code, §29.010, and Title 34 CFR §300.149 and §300.600.

§97.1072. Residential Facility Monitoring; Determinations, Investigations, and Sanctions.

(a) Students with disabilities residing in residential facilities (RFs) are a unique and vulnerable population that often has limited access to family members who can advocate for their educational needs. Accordingly, the commissioner of education hereby establishes the Residential Facility Monitoring (RFM) system, through which the Texas Education Agency (TEA) will meet its federal and state special education monitoring obligations under 34 Code of Federal Regulations §300.149 and §300.600 and Texas Education Code (TEC), §29.010, for this population. The definition of an RF for purposes of the RFM system will be included in the Residential Facility Monitoring (RFM) Manual provided in subsection (f) of this section. Districts serving students with disabilities residing in RFs located within the districts' geographic boundaries and/or jurisdictions will be subject to the RFM system. These districts are referred to as RF districts.

(b) RF districts shall report data, as directed by the TEA, in a data collection system accessible through the TEA secure website.

(c) The commissioner shall determine which RF districts will be subject to RFM activities based on a review of available information according to the following general criteria or other factors set forth in the Residential Facility Monitoring (RFM) Manual:

(1) the degree to which the district's data reflect a need for monitoring and intervention, as indicated by the number of RF students with disabilities enrolled in the district; the presence of new RFs within the district; and the district's performance on certain critical indicators related to compliance with special education program requirements;

(2) a comparison of the district's performance to aggregated state performance and to the performance of other districts;

(3) a review of the district's longitudinal performance;

(4) the availability of state and regional resources to intervene in all districts exhibiting a comparable need for intervention; and

(5) the length of time since the district was last subject to RFM activities.

(d) In addition to the criteria under subsection (c) of this section, the commissioner may use random district selection as a method of system validation and/or may consider any other applicable information such as:

(1) complaints investigation results;

(2) special education due process hearing decisions;

(3) data validation activities;

(4) monitoring results under §97.1071 of this title (relating to Special Program Performance; Intervention Stages);

(5) the degree to which the district has achieved timely correction of previously identified noncompliance with program requirements;

(6) longitudinal intervention history; and

(7) other relevant factors.

(e) The commissioner may use graduated monitoring and intervention activities to implement the RFM system. In addition to any investigation, intervention, or sanction authorized by TEC, Chapter 39, or §89.1076 of this title (relating to Interventions and Sanctions), such intervention may require an RF district to implement and/or participate in:

(1) focused analysis of district data;

(2) reviews of district program effectiveness;

(3) public meetings;

(4) focused compliance reviews conducted by review teams established by the TEA;

(5) on-site reviews; and/or

(6) corrective action planning.

(f) The specific criteria, standards, and procedures for implementing the RFM system are described in excerpted sections of the Residential Facility Monitoring (RFM) Manual, dated August 2010, provided in this subsection.
Figure: 19 TAC §97.1072(f)

(g) RFM activities under this section are intended to assist the RF district in achieving compliance with federal and state special education requirements and do not preclude or substitute for a sanction under another provision of this subchapter.

(1) The TEA will implement sanctions authorized under TEC, Chapter 39, or this subchapter as necessary to promote timely and complete correction of identified noncompliance.

(2) A decision to impose sanctions shall be based on the accreditation and compliance performance of the district, as determined under §89.1076 of this title, §97.1035 of this title (relating to Procedures for Accreditation Sanctions), and this subchapter.

(h) RFM actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by the TEA such as:

(1) assignment of required professional services, paid for by the district;

(2) required submission of an improvement and/or corrective action plan, including the provision of compensatory services as appropriate, paid for by the district;

(3) expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or a corrective action plan, and submission of district/program data;

(4) public release of RFM review findings;

(5) issuance of a public notice of deficiencies and planned corrective actions to the district's board of trustees;

(6) denial of requests under TEC, §7.056 and/or §12.114;

(7) appointment of a monitor, conservator, management team, or board of managers under TEC, Chapter 39, and/or §97.1073 of this title (relating to Appointment of Monitor, Conservator, or Board of Managers);

(8) reduction, suspension, redirection, or withholding of program funds;

(9) lowering of the district's special education monitoring status; and/or

(10) lowering of the district's accreditation status.

(i) As a system safeguard, the TEA will conduct desk review or on-site verification activities through random or other means of selection to verify system effectiveness and/or district implementation of RFM requirements, including, but not limited to, accuracy of data reported through the data collection system accessible through the TEA secure website and other data reporting, timely and sufficient implementation of monitoring and intervention activities, implementation of corrective action plans, and continued district compliance after completion of a corrective action plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005515
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY
DIVISION 2. FINANCIAL SOLVENCY

19 TAC §109.1101

The Texas Education Agency (TEA) proposes new §109.1101, concerning financial solvency. The proposed new section would allow the commissioner to implement and administer the provisions of the Texas Education Code (TEC), §39.0822 and §39.0823, as added by Section 59 of House Bill (HB) 3, 81st Texas Legislature, 2009, which direct the TEA to develop a review process relating to financial solvency of school districts and open-enrollment charter schools and to take certain actions if the TEA's review indicates a projected deficit.

HB 3, 81st Texas Legislature, 2009, added the TEC, §39.0822 and §39.0823. Section 39.0822 requires the commissioner to adopt rules related to the financial solvency review required by that section. This review is to be developed by the TEA, in consultation with school district financial officers and public finance experts, to anticipate the future financial solvency of school districts and open-enrollment charter schools through analysis of tax and financial information and staff and student count information. Section 39.0823 requires the commissioner to assign an accredited-warned status to a school district or an open-enrollment charter school that has been required to submit a financial plan as a result of the findings of the TEA's financial solvency review if the district or charter school fails to submit, get approval for, or appropriately implement the plan.

From December 2009 through April 2010, the TEA held a series of focus groups with school district and open-enrollment charter school financial officers and public finance experts to develop the financial solvency review required by the TEC, §39.0822, and to solicit feedback on draft rule language. The proposed new 19 TAC §109.1101, which incorporates feedback from these focus groups, would implement the required financial solvency review. Specifically, the proposed new rule would explain the review's purpose, provide definitions, describe the data to be used in the review, explain the review process and methodology, and set out requirements related to financial plans and consequences for failing to comply with these requirements. The proposal would include adoption as rule the document entitled "Financial Solvency Review Methodology."

In addition, Chapter 109, Subchapter AA, would be renamed and organized to include the proposed new financial solvency rule. The subchapter title would change from "Commissioner's Rules Concerning Financial Accountability Rating System" to "Commissioner's Rules Concerning Financial Accountability."

School districts and open-enrollment charter schools would be required to use an electronic template to submit to the TEA first-quarter financial data for the current school year; information about district/school borrowing, administration turnover, and whether the district has recently declared financial exigency or the school has recently declared bankruptcy; and comments on any irregularities. School districts and open-enrollment charter schools that the TEA may select for additional review would be required to submit interim financial reports supplemented by staff and student data. The proposed rule action would have no locally maintained paperwork requirements.

Lisa Dawn-Fisher, deputy associate commissioner for school finance, has determined that for the first five-year period the new section is in effect there will be no additional costs for state or local government as a result of enforcing or administering the new section.

Dr. Dawn-Fisher has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be a financial solvency review that will alert school districts and open-enrollment charter schools to conditions that could result in financial insolvency and allow the districts and schools to correct these conditions before financial insolvency occurs. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 8, 2010, and ends November 8, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 8, 2010.

The new section is proposed under the Texas Education Code (TEC), §39.085, which authorizes the commissioner to adopt rules as necessary for the implementation and administration of financial accountability for the public school system. In adopting rules for a required financial solvency review program, TEC, §39.0822(d), authorizes the commissioner to adopt rules to allow a district to enter estimates of critical data into the program before the district adopts its budget.

The new section implements the Texas Education Code, §§39.0822, 39.0823, and 39.085.

§109.1101. Financial Solvency Review.

(a) Purpose of financial solvency review. The purpose of the financial solvency review is to anticipate the future financial solvency of Texas public school districts and open-enrollment charter schools. The review is designed to alert school districts and open-enrollment charter schools to circumstances that could lead to financial insolvency.

(b) Definitions. The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Financial solvency--When used to describe a school district or open-enrollment charter school, the condition in which a school district or open-enrollment charter school either is generally paying its debts as they become due, unless such debts are the subject of a bona fide dispute, or is able to pay its debts as they become due.

(2) Public Education Information Management System (PEIMS)--The system described by §61.1025 of this title (relating to

Public Education Information Management System (PEIMS) Data and Reporting Standards).

(c) Financial solvency review data.

(1) In its financial solvency review, the Texas Education Agency (TEA) will use the following data, which are available to the TEA through existing data sources:

(A) annual financial audits for the past two school years;

(B) PEIMS financial actual data for the past two school years;

(C) PEIMS financial budget data for the current year and the past two school years;

(D) PEIMS staff data for the current year and the past two school years;

(E) PEIMS student data for the current year and the past two school years; and

(F) school district tax rate data.

(2) In its financial solvency review, the TEA will use the following additional information, which the TEA will request from school districts and open-enrollment charter schools:

(A) first-quarter school district and open-enrollment charter school financial data for the current school year; and

(B) school district and open-enrollment charter school comments.

(3) School districts and open-enrollment charter schools that the TEA selects for additional review may be required to submit other additional information as described in subsection (d)(5) of this section.

(4) School districts and open-enrollment charter schools that the TEA projects to have a general fund deficit within the next three school years will be required to submit interim financial reports supplemented by staff and student data as described in subsection (d)(5) of this section.

(d) Financial solvency review.

(1) In its financial solvency review, the TEA will use the methodology described in the document provided in this paragraph, entitled "Financial Solvency Review Methodology."
Figure: 19 TAC §109.1101(d)(1)

(2) In its financial solvency review, the TEA will analyze the following:

(A) school district and open-enrollment charter school revenues and expenditures for the past school year; and

(B) projected school district and open-enrollment charter school revenues and expenditures for the current school year and the next two school years.

(3) In analyzing the information under paragraph (2) of this subsection, the TEA may consider, for the past school year, the current school year, and the next two school years, as appropriate, the following:

(A) student-to-staff ratios relative to expenditures;

(B) average staff salaries;

(C) the rate of change in the unreserved general fund balance;

(D) the number of students enrolled in the district or open-enrollment charter school;

(E) the adopted tax rate of the school district;

(F) any independent audit report prepared for the school district or open-enrollment charter school; and

(G) actual school district or open-enrollment charter school financial information for the first quarter.

(4) The TEA will notify any school district or open-enrollment charter school for which the financial solvency review shows one or more of the following:

(A) a student-to-staff ratio that is significantly outside the norm;

(B) a rapid depletion of the general fund balance; or

(C) a significant discrepancy between submitted budget figures and projected revenues and expenditures.

(5) The TEA may extend the financial solvency review and require additional documentation of a school district or open-enrollment charter school that has been notified as described in paragraph (4) of this subsection following an initial review.

(A) The TEA will determine additional documentation requirements on a case-by-case basis.

(B) The TEA will use additional documentation and comments submitted by a school district or open-enrollment charter school to determine whether the school district or open-enrollment charter school is projected to have a deficit for its general fund within the next three school years.

(C) If the financial solvency review indicates a projected deficit for a school district or open-enrollment charter school general fund within the next three school years, the school district or open-enrollment charter school must submit to the TEA interim financial reports, supplemented by staff and student count data, as needed, for the TEA to evaluate the current budget status of the school district or open-enrollment charter school.

(D) If analysis and evaluation of the additional data required to be submitted under subparagraph (C) of this paragraph substantiates a projected deficit within the next three school years, the school district or open-enrollment charter school must develop and submit a financial plan to the TEA for approval.

(6) All documentation generated and gathered in the process of determining a school district's or open-enrollment charter school's financial solvency will be considered working papers and not subject to open records requests. Financial solvency documentation related to school districts and open-enrollment charter schools required to submit financial plans will be subject to open records requests as permitted by statute or rule.

(e) Financial plans.

(1) If the TEA determines that a school district or open-enrollment charter school is required to submit a financial plan, the TEA will provide written notification of this requirement to the school district or open-enrollment charter school.

(2) On receiving the notification described in paragraph (1) of this subsection, a school district or open-enrollment charter school must develop and submit to the TEA for approval a financial plan for avoiding the projected insolvency.

(3) If the TEA determines that a submitted financial plan will permit a school district or open-enrollment charter school to avoid

projected insolvency, the TEA will provide written notification of its approval of the financial plan to the school district or open-enrollment charter school.

(4) If the TEA determines that a submitted financial plan will not permit a school district or open-enrollment charter school to avoid projected insolvency, the TEA will require the school district or open-enrollment charter school to modify the financial plan submitted to the TEA. The TEA will provide written notification of this requirement to the school district or open-enrollment charter school.

(5) The TEA may monitor the implementation of a financial plan or modified financial plan that is based on a financial review for a period of up to three years after TEA approval of the financial plan or modified financial plan, as applicable.

(f) Financial plans and accreditation. The commissioner of education will assign an Accredited-Warned status to a school district or open-enrollment charter school that is required to develop and submit a financial plan as provided by subsection (e) of this section if:

(1) the school district or open-enrollment charter school fails to submit a financial plan to avoid a projected deficit;

(2) the school district or open-enrollment charter school fails to get approval from the TEA for a financial plan or modified financial plan;

(3) the school district or open-enrollment charter school fails to comply with a TEA-approved financial plan; or

(4) the TEA determines in a subsequent school year, based on financial data submitted by the school district or open-enrollment charter school, that the approved plan for the school district or open-enrollment charter school is no longer sufficient or is not appropriately implemented.

(g) Decisions by commissioner final. All financial plan approval decisions and accreditation status decisions made by the commissioner in regard to the financial solvency review are final and cannot be appealed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005522
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) proposes an amendment to §129.1025, concerning student attendance accounting. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The proposed amendment would adopt by reference the *2010-2011 Student Attendance Accounting Handbook.*

Legal counsel with the TEA has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the Texas Administrative Code. This decision was made in 2000 as a result of a court decision challenging state agency decision making via administrative letters and publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, staff proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website each July or August. A supplement, if necessary, is also published on the TEA website.

The proposed amendment to 19 TAC §129.1025 would adopt by reference the *2010-2011 Student Attendance Accounting Handbook.* Significant changes to the *2010-2011 Student Attendance Accounting Handbook* from the *2009-2010 Student Attendance Accounting Handbook Version 2* include the following.

Throughout the Handbook

In sections 3, 4, 6, 7, 8, and 10, references to students transferring would be replaced with references to students moving where appropriate, to preserve use of the word *transfer* only for circumstances in which a student is legally transferred into a district as described in subsection 3.2.1.4.

In sections 3, 5, and 10, requirements from which charter schools are exempt would be explicitly identified.

Section 1

An explanation that web addresses are subject to change and of how to find the most current TEA web addresses would be added.

Section 2

Clarification that documentation other than documentation related to student attendance may need to be kept longer than five years would be added.

An explanation that, for certain alternative attendance programs, eligible minutes of attendance instead of eligible days of attendance should be reported would be added.

Section 3

Specific references to aliens, foreign exchange students, and students who attend a regional day school program for the deaf

would be deleted from the subsection on average daily attendance (ADA) eligibility codes.

Information on special minimum eligible age requirements applicable to children of military families would be added.

Clarifications that special education students who are returning to school under 19 TAC §89.1070, Graduation Requirements, are eligible for funding would be added.

In subsection 3.2.3.2, a sentence identifying types of students who are eligible to graduate but who may continue their education and be eligible for funding would be corrected to indicate that two exceptions, and not just one, are being described.

Information on student absences for the purpose of auditing classes at a charter school would be added.

A subsection on a limited exception to the requirement that a district serve a student residing in the district would be added.

Information on which district employees are eligible to take attendance and an explanation that using a "sign-in" sheet to record attendance is not acceptable would be added.

A subsection on the attendance-taking protocol to be used when the start of the school day is delayed would be added.

A subsection on the permissibility of having alternate attendance-taking times for certain students would also be added.

A clarification of which absences are considered absences for required court appearances would be added, as would be a clarification that temporary absences for health care appointments must be for face-to-face appointments to be excused for funding purposes.

A subsection on excused absences for academic purposes would be added.

An explanation that a student who is exempt from taking exams and attends school on exam day only to "sign in" has not met minimum instructional time requirements for funding purposes would be added.

Multiple changes would be made in the subsection on the General Education Homebound (GEH) program. An explanation that, over the period of confinement, a student must be provided instruction in all his or her courses would be added. A clarification that a student entering the program retains the same ADA eligibility code as before entering the program would be added. The GEH funding chart would be expanded to clarify how eligible days present are earned, and information on calculating eligible days present would be added. A subsection on test administration and the GEH program would be added. Clarification on transitioning out of (and back into) the program and the calculation of attendance would be added.

All information on waivers would be placed under the same subsection. Clarification about when a missed instructional day waiver may be applied for would be added, as would information on early-release days. Information on documenting waiver approval and on attendance accounting for missed instructional days or low-attendance days would be added.

Dates for submission and resubmission of attendance data by districts operating year-round programs would be updated.

Section 4

Special education eligibility requirements would be clarified.

In applicable subsections throughout the section, explanations would be added that, for the mainstream instructional setting/arrangement code to be used for a three- or four-year-old student, the majority of the student's class must be made up of students who are not receiving special education services.

Minor clarifications and a correction would be made in the Public Education Information Management System (PEIMS) coding charts that appear in subsection 4.2.10. Information applicable to prekindergarten students who do not have disabilities would be removed and added to a chart in section 7.

A subsection on transfer of records and special education students would be added.

A statement that a student's admission, review, and dismissal (ARD) committee must review the student's individualized education program at least annually would be added.

Clarification about when to use the code for no instructional arrangement/setting would be added.

Multiple changes would be made in the subsection on the homebound instructional arrangement/setting. Eligibility criteria would be clarified. An explanation that a student's ARD committee determines the amount of services to be provided to the student over the period of confinement would be added. A clarification that a student being served in this setting retains the same ADA eligibility code as before being served in this setting would be added. The homebound funding chart would be expanded to clarify how eligible days present are earned, and information on calculating eligible days present would be added. Clarification on transitioning out of (and back into) this setting and the calculation of attendance would be added.

The term *state school* would be replaced with *state supported living center.*

In subsection 4.6.6, the first column of the table, which provides information on the coding to use for students in certain residential facilities, would be revised for clarity.

Clarification about when to use code 42, one of the codes for the resource room/services instructional arrangement/setting, for a 3- or 4-year-old student would be added, as would clarification about the speech therapy indicator code to use for students in this setting who are pulled out of the general education classroom for speech therapy and other services.

Clarification that the code for the vocational adjustment class instructional arrangement/setting applies only to a student in paid employment would be added.

Language describing requirements related to the mainstream instructional arrangement/setting code would be made consistent in all subsections in which the requirements appear.

Statements that students served at the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf should be reported with ADA eligibility codes of 0 would be removed.

Section 5

Requirements related to teacher qualifications and to required documentation would be modified.

A statement that students below Grade 9 are not eligible for career and technical education (CTE) contact hours even if they take a high school course would be removed.

Requirements related to course funding eligibility, specifically to course program intent codes and to PEIMS reporting, would be modified.

Information on career preparation courses would be revised to specify that these courses are for only paid experience, and information on CTE practicum courses would be added. Information on requirements for both of these types of courses would be added, along with an explanation of the differences between them.

Requirements related to paid CTE learning experiences would be modified.

The term *independent study course* would be replaced with *Problems and Solutions course.*

Section 6

Enrollment procedures would be modified to specify that personnel testing students for English proficiency must be trained.

The bilingual/English as a Second Language (ESL) program exit criteria and procedures would be updated to reflect 2010-2011 school year testing information and to reference current documents.

Certification requirements for teachers of certain bilingual/ESL high school courses would be modified.

Writing samples would be added to the list of documentation that must be kept in a student's permanent record.

Section 7

Information on documentation requirements related to prekindergarten eligibility based on a parent's membership in the armed forces would be revised.

Information on letters verifying prekindergarten eligibility that are provided by the Department of Family and Protective Services and Child Protective Services would be updated.

The table in the subsection on prekindergarten eligible days present would be revised.

Additional information and requirements related to the prekindergarten Early Start Grant Program would be added.

Section 8

The subsection on documentation would be revised to state that the gifted/talented program should be included in the district improvement plan as well as in the campus improvement plan.

Section 9

Multiple changes would be made in the subsections on Pregnancy Related Services (PRS) Compensatory Education Homebound Instruction (CEHI) and on special education and PRS collaborative confinement. The charts on eligible days present earned would be expanded to clarify how the days are earned, and information on calculating eligible days present would be added to the collaborative confinement subsection. Clarifications that a student being served in confinement retains the same ADA eligibility code as before being served in confinement would be added. An explanation that, over the period of confinement, a student must be provided instruction in all her courses would be added to the CEHI subsection.

Section 10

Information on evaluation of disciplinary alternative education programs (DAEPs) and juvenile justice alternative education programs (JJAEPs) and accountability would be modified and added.

Clarification of information and requirements related to residential alternative education programs would be added.

Information on reporting attendance of "truant" JJAEP students would be added.

Section 11

Texas Administrative Code information on dual credit course eligibility that was previously referenced in a footnote would be explicitly stated.

Information on reporting dual credit attendance in PEIMS would be modified.

A subsection on Gateway to College and similar programs would be added.

The subsection on the Optional Extended Year Program would be modified to explain that the program will not be funded for the 2010-2011 school year.

Information on an exception to certain Optional Flexible School Day Program requirements would be added.

The subsection on the Optional Flexible Year Program (OFYP) would be modified to add a statement that districts are encouraged to provide additional instructional days for eligible students throughout the school year instead of only at the end of the school year and a statement that an OFYP instructional day may not be scheduled on the same day as an early release day.

In the subsection on the Texas Virtual School Network, information referencing students in Grades 3-9 would be modified to reference students in Grades 3-10. Information on funding and fees would be clarified.

A subsection on the Interstate Compact on Educational Opportunity for Military Children would be added.

Section 12

An incorrect funding weight amount would be corrected.

Section 13

Glossary definitions would be updated, and obsolete definitions would be deleted.

The proposed amendment would place the specific procedures contained in the *2010-2011 Student Attendance Accounting Handbook* in the Texas Administrative Code. The TEA distributes FSP funds according to the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through PEIMS.

The handbook has long stated that school districts and open-enrollment charter schools must keep all student attendance documentation for five years from the end of the school year. Any new student attendance documentation required to be kept would correspond with the student attendance accounting requirement changes described previously.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment.

Ms. Beaulieu has determined that for each year of the first five years the amendment is in effect the public benefit anticipated

as a result of enforcing the amendment would be to continue to inform the public of the existence of annual publications specifying attendance accounting procedures for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 8, 2010, and ends November 8, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 8, 2010.

The amendment is proposed under the Texas Education Code (TEC), §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the TEC, §42.004.

§129.1025. Adoption by [~~By~~] Reference: Student Attendance Accounting Handbook.

(a) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2010-2011 [~~2009-2010~~] are described in the official Texas Education Agency (TEA) publication *2010-2011* [~~*2009-2010*~~] *Student Attendance Accounting Handbook* [~~*Version 2*~~], which is adopted by this reference as the agency's official rule. A copy of the *2010-2011* [~~*2009-2010*~~] *Student Attendance Accounting Handbook* [~~*Version 2*~~] is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner of education will [~~shall~~] amend the *2010-2011* [~~*2009-2010*~~] *Student Attendance Accounting Handbook* [~~*Version 2*~~] and this subsection adopting it by reference, as needed.

(b) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 27, 2010.

TRD-201005566
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

CHAPTER 157. HEARINGS AND APPEALS
SUBCHAPTER EE. REVIEW BY STATE OFFICE OF ADMINISTRATIVE HEARINGS: CERTAIN ACCREDITATION SANCTIONS

19 TAC §§157.1151, 157.1153, 157.1155, 157.1167, 157.1169, 157.1171

The Texas Education Agency (TEA) proposes amendments to §§157.1151, 157.1153, 157.1155, 157.1167, 157.1169, and 157.1171, concerning hearings and appeals. The sections establish provisions relating to the review of certain accreditation sanctions by the State Office of Administrative Hearings (SOAH). The proposed amendments would update and clarify provisions relating to the SOAH review of certain accreditation sanctions. The proposed amendments reflect changes in the Texas Education Code (TEC), Chapter 39, as reflected in House Bill (HB) 3, 81st Texas Legislature, Regular Session, 2009.

HB 1, 79th Texas Legislature, Third Called Session, 2006, required that an opportunity for challenging the record review of accreditation sanctions be available in specified circumstances and provided by the SOAH. The rules adopted in 19 TAC Chapter 157, Hearings and Appeals, Subchapter EE, Review by State Office of Administrative Hearings: Certain Accreditation Sanctions, implement these requirements. HB 3, 81st Texas Legislature, Regular Session, 2009, enacted numerous changes to the TEC, Chapter 39, and renumbered the chapter, requiring that existing rules be revised and updated.

The proposed amendments to 19 TAC Chapter 157, Subchapter EE, would update and clarify existing rules in light of HB 3. Specifically, the proposed amendments would establish the following.

Section 157.1151, Applicability, and 19 TAC §157.1153, Applicability of Other Law, would be amended to update statutory references in alignment with HB 3.

Section 157.1155, Petition for Review, would be amended to revise the timeline by which a petitioner may file with the TEA a petition for review. Additionally, as a result of the proposal to shorten the timeline under subsection (a), subsection (b) would be revised to allow a petition for review to be amended or supplemented after the deadline for filing a petition for review.

Section 157.1167, Expedited Review, would be amended to add subsection (f), requiring an administrative law judge to issue a final order no later than May 31 immediately following a final order issued no later than March 15 under §97.1037(f), relating to the record review of a decision to assign an accreditation status of Not Accredited-Revoked to a district. A minor conforming amendment would be made to subsection (a).

Section 157.1169, Conduct of Review During a Ratings Appeal, would be amended to update statutory references in alignment with HB 3.

Section 157.1171, Final Decision, would be amended to remove a reference to a section of statute that was deleted and restructured in HB 3 and to rely on other statutory references and procedures reflected in the subchapter.

The proposed amendments would have no new reporting implications. Changes to current procedures include changes to timeframes related to petitions in 19 TAC §157.1155 and addi-

tional specifications related to an accreditation status final order issued by an administrative law judge in 19 TAC §157.1167. The proposed amendments would have no new locally maintained paperwork requirements.

Laura Taylor, associate commissioner for accreditation, has determined that for the first five-year period the amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments. The proposed rule actions would add clarification of law related to HB 3, 81st Texas Legislature, Regular Session, 2009. While there is no additional fiscal burden beyond what already is required by law, a district may incur costs if it elects to hire an attorney to represent them in a SOAH proceeding. The TEA may incur costs in contracting with the SOAH for these hearings.

Ms. Taylor has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be to ensure that entities are afforded appropriate review of certain accreditation sanctions and to provide the TEA and SOAH procedures for the conduct of such reviews. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins October 1, 2010, and ends November 1, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 1, 2010.

The amendments are proposed under the Texas Education Code, §39.152, which authorizes the agency to establish procedures for creating an administrative record for review by the State Office of Administrative Hearings for certain decisions.

The amendments implement the Texas Education Code, §39.152.

§157.1151. Applicability.

(a) This subchapter applies only to a final order issued under §97.1037(f) of this title (relating to Record Review of Certain Decisions) that orders:

(1) alternative management of a school district campus or a charter school campus under Texas Education Code (TEC), §39.107 [~~§39.1327~~];

(2) closure of a school district or an open-enrollment charter school under TEC, §§39.052 [~~§§39.071(c)~~], 39.102 [~~39.131(a)~~], or 39.104 [~~39.1321(c)~~]; or

(3) closure of a school district campus or charter school campus under TEC, §39.107 [~~§39.1324 or §39.1327~~].

(b) This subchapter does not apply to:

(1) a final order issued under §97.1037(f) of this title that orders:

(A) assignment under §97.1055 of this title (relating to Accreditation Status) of an accreditation status of Accredited-Warned or Accredited-Probation;

(B) assignment of a board of managers under TEC, §39.112 [~~§39.136~~] and §39.102, [~~§39.131(a)(9)~~] or TEC, §39.107 [~~§39.1324(c)~~]; or

(C) an audit recovery from an open-enrollment charter school under §97.1037(a)(4) of this title; or

(2) a final order issued pursuant to the no-request provision specified in §97.1037(g) of this title.

§157.1153. Applicability of Other Law.

(a) A challenge under this subchapter shall be governed by the contested case procedures provided by this subchapter and Government Code, Chapter 2001, as modified by Texas Education Code, §39.152 [~~§39.302~~].

(b) - (c) (No change.)

§157.1155. Petition for Review.

(a) A school district or open-enrollment charter school subject to a decision defined by §157.1151 of this title (relating to Applicability) (petitioner) may file with the Texas Education Agency (TEA) division responsible for hearings and appeals a petition for review of the decision under this subchapter not later than the 15th [~~30th~~] calendar day after the date the decision complained of is first communicated to the school district or charter school.

(1) - (4) (No change.)

(b) Failure to comply with the requirements of subsection (a) of this section shall result in dismissal of the petition for review. [~~A petition for review may not be amended or supplemented after the deadline for filing a petition for review.~~]

(c) - (d) (No change.)

§157.1167. Expedited Review.

(a) The State Office of Administrative Hearings shall expedite its review of a challenge under this subchapter in order to meet the requirements of this section.

(b) - (e) (No change.)

(f) In all cases where the commissioner of education initially assigns an accreditation status of Not Accredited-Revoked on or before March 15, the administrative law judge shall issue a final order not later than the May 31 immediately following the final order issued under §97.1037(f) of this title (relating to Record Review of Certain Decisions).

§157.1169. Conduct of Review During a Ratings Appeal.

(a) A decision is final within the meaning of §157.1151(a) of this title (relating to Applicability) even if based, in part, on a rating that may yet be appealed under Texas Education Code (TEC), §39.151 [~~§39.301~~]. In the commissioner of education's sole discretion, the decision may be delayed or withdrawn pending the outcome of a ratings appeal under TEC, §39.151 [~~§39.301~~], that is timely and sufficient under applicable rules.

(b) The administrative law judge shall proceed with an expedited review under this subchapter during any ratings appeal under TEC, §39.151 [~~§39.301~~], and shall presume for purposes of such review that the rating will not change by reason of the appeal, unless the commissioner:

(1) withdraws the decision under subsection (a) of this section; or

(2) requests that review of the final decision be abated pending the outcome of the ratings appeal.

(c) If a rating is adjusted by the commissioner following an appeal under TEC, §39.151 [~~§39.301~~], the administrative law judge shall order that the adjusted rating be treated as additional evidence to be taken before the Texas Education Agency (TEA) under §157.1163 of this title (relating to Proceedings Regarding Agency Record). The TEA may change its findings and/or decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the administrative law judge.

§157.1171. Final Decision.

(a) The decision of the administrative law judge:

~~[(1) must rule on each mandatory sanction listed in Texas Education Code, §39.1324;]~~

(1) [~~(2)~~] may not order a sanction or relief that the commissioner of education is not authorized to order under applicable law;

(2) [~~(3)~~] may not change an accreditation status; and

(3) [~~(4)~~] may not change an academic or a financial accountability rating.

(b) The decision of the administrative law judge is final and may not be appealed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005513
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 376. VIOLATIONS AND PENALTIES

22 TAC §376.25, §376.27

The Texas State Board of Podiatric Medical Examiners proposes amendments to §376.25 and §376.27, concerning Violations and Penalties. The amendments to §376.25 and §376.27 are proposed to update the complaint form and revise rules on the complaint investigation process to include establishing a "Peer Review" avenue with the Texas Podiatric Medical Association as an alternate remedy to addressing complaints.

Hemant Makan, Executive Director, has determined that for each year of the first five years the amended rules are in effect, there will be no fiscal implications for state or local government as a result of adopting the amended sections.

Mr. Makan has also determined that for each year of the first five years the amended rules are in effect, the public benefit anticipated as a result of adopting the amendments to §376.25 and §376.27 will be more efficient address of complaints at a peer level as the agency is refocusing its priorities in the wake of state mandated budget cuts. This will allow the Board to maintain its focus on major standard of care and criminal complaints which pose the greatest risk to public safety. There will be no effect on small or micro-businesses. There are no economic costs to persons who are required to comply with the sections.

Comments on or about the proposed amendments may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, Janie.Alonzo@foot.state.tx.us.

The amendments are proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed amendments to §376.25 and §376.27 implement Texas Occupations Code Chapter 202, Subchapter J.

§376.25. Complaint Form.

The Board shall adopt the following form as its official complaint form. The form, along with a "Consumer Information" pamphlet explaining the Board's functions and complaint process, will be furnished to any person who wishes to file a complaint with the Board. As an alternative, further explanatory information about the complaint process and jurisdictional policies can be found on the Board's website. The official complaint form is suggested for uniformity, however, any written or electronic communication that clearly advises the Board of the information required shall be deemed sufficient.
Figure: 22 TAC §376.25

§376.27. Investigations of Complaints Filed with the Board.

(a) Receipt of Complaint.

(1) All written and signed complaints filed with the Board are subject to investigation [~~will be investigated~~]. Complaints may also be filed electronically via e-mail and the Board's website with use of the official complaint form. Anonymous written complaints may be investigated and will be logged and filed for information purposes. Complainants who wish to complain by telephone will be advised that their complaints must be submitted in writing, must be signed by complainant, and that Board complaint forms will be mailed to them for their use and submission to the Board. A log will be maintained with names and addresses of complainants who telephone the Board offices and to whom complaint forms are mailed. The Board shall also maintain an information file for each complaint that contains a record of all persons contacted in relation to the complaints, summary of findings at each stage of complaint process, an explanation of legal basis and reason that a complaint was dismissed, and other relevant information. If necessary, agency staff may request a complainant to swear by affidavit to the allegations made before a Notary Public to attest to the truthfulness of the complaint. Failure to submit a sworn/notarized statement or affidavit, or the filing of an untruthful/false complaint can result in the complaint being dismissed.

(2) When a written complaint is received at the Board Offices, the complaint will be date-stamped immediately. The complaint

will then be reviewed by the Executive Director or Investigator. A complaint file will be created and the complaint will be assigned to an Investigative Liaison, who is a Board member and a licensed podiatric physician, or a Podiatric Medical Reviewer as determined by agency staff to seek clinical expertise and medical judgment as necessary. Jurisdictional complaints investigated by the Board include, but are not limited to, allegations involving death, substance abuse, fraud, negligence, advertising, fees, records, inappropriate physician behavior, impaired physician and office inspections. Complaints received based on information and facts that have previously been or are currently being investigated may not warrant additional investigation. If a complaint is determined to be non jurisdictional, the complaint may be referred at the complete discretion of the Board to another entity or government agency for investigation.

(3) If an allegation is determined to be critical in nature, it will be assigned a high priority and the requirement for written and signed complaints will be waived temporarily, but will be obtained later in the investigative process. Upon receipt of information posing a threat to public safety and welfare, in response to trends/patterns in violations or in order to meet regulatory mandates, the Board may initiate complaints of its own. In order to track trends/patterns, information may be entered into the Board's complaint database to establish a regulatory index.

(4) Some complaints which are of a low priority or involve miscommunication may have the possibility to be resolved via a peer review process with the state podiatric society or trade association. These scenarios may involve, but are not limited to, situations where there is a lack of information or misunderstanding as to the care delivered, feelings that a patient's time with the podiatrist was brief/hurried/abrupt, an appearance that the podiatrist was uncaring, professional disputes/conflicts (i.e. peer-to-peer), fee disputes, third party payer disputes, common orthotic issues, bedside manner issues, medical record accessibility issues, advertising issues and some surgery complaints where all a patient is seeking is continuity of care and corrective remedies. The Board shall have complete discretion to refer such complaints for peer review to a state podiatric society or trade association for professional resolution in accordance with the provisions of Texas Occupations Code Chapter 202, Subchapter J "Peer Review." A written report of a society's or trade association's professional review in response to a Board referral must contain a summary of the findings, recommendations, conclusions and resolution with submission of the same made to the Board. In the event of a professional resolution amongst the society/trade association, complainant and podiatrist, the society/trade association shall notify the complainant and podiatrist of the same by letter explaining the action taken with a copy of the letter submitted to the Board.

(b) Investigation of Allegations.

(1) Upon receipt of the written allegation and/or determination of a high priority issue, the Executive Director or Investigator will assure that the complaint information is entered into the computer and given a file number. A letter of acknowledgment will be promptly mailed to the complainant. Case files will be reviewed from time to time as needed to insure cases comply with scheduling.

(2) Depending on the type of allegations and/or violations at issue, the investigation of the complaint will usually be conducted in accordance with the following guidelines:

(A) After a signed and written complaint is received, the Executive Director or Investigator may interview the complainant either in person or over the telephone so that the complainant has an opportunity to explain or elaborate upon the allegations made in the complaint. If the allegation is a misunderstanding and/or without merit, the Executive Director or Investigator informs the Investigative Liaison, as necessary, a recommendation that the case be closed upon submission of a written report to and with concurrence of the Investigative Liaison informs the complainant that the case be closed.

(B) After the complainant's statement has been obtained, and the Executive Director or Investigator determines that a potential violation exists, the licensee is informed of the nature of the allegations in the complaint. [~~All the records and files of the Board shall be public records and open to inspection at reasonable times, except the investigations files and records which are confidential.~~] Patient records may be requested to assist in the investigation. The licensee is given an opportunity to respond to the allegations either in an interview with the Executive Director or Investigator or by giving a narrative statement via mail or FAX or electronic means. The licensee may be provided a copy of the complaint unless providing a copy of the complaint would jeopardize the investigation or is prohibited under another provision of law. If a copy of the complaint is provided to the licensee, he/she may disclose the information to another person only to the extent consistent with the authorized purpose for which the release of information was provided. Otherwise, a complaint, report, investigation file, or other investigative information in the possession of or received or gathered by the Board or an employee or agent of the Board that relates to a license holder, a license application, or a criminal investigation or proceeding is privileged, confidential, and not subject to discovery, subpoena, or any other legal method of compelling release.

(C) At any time before a complaint is resolved, further investigation may be necessary in the form of second or third opinions, obtaining supporting documents, interviewing other witnesses, etc., depending on the case at hand. During the course of the investigation, the board will periodically notify the complainant of the status of the complaint until final disposition, unless the notification would jeopardize an undercover investigation.

(D) If the case does not require the medical judgment of the Investigative Liaison, and the Executive Director or Investigator concludes, after all elements have been investigated, that a violation probably exists the Executive Director or Investigator shall compose and mail to the licensee an Agreed Order inviting the licensee to an informal hearing on the Agreed Order to discuss the allegations made against the licensee. If the Executive Director or Investigator concludes that the complaint has no merit, the Executive Director or Investigator will apprise the Investigative Liaison assigned to the case, as necessary, and authorize closing the case. The Executive Director or Investigator will assure the complainant and licensee are notified by letter explaining the action taken on the dismissed complaint. The Board may also inform the subject licensee of any recommendations that may improve the licensee's practice. If the complaint is determined to be untruthful, false, baseless, unfounded, frivolous or malicious, the complaint shall be dismissed and a letter shall be sent to the address of record of the complainant and licensee informing him/her that the complaint was dismissed.

(E) If the case does require the medical judgment of the Investigative Liaison, and the Executive Director or Investigator concludes, after all relevant elements have been investigated, that a violation probably exists, the Executive Director or Investigator shall send copies of pertinent documents, along with a cover letter to the Investigative Liaison, who will assist in determining whether the case should be closed, further investigation is warranted, or the licensee should be invited to respond to the allegations at a conference. If the case is closed, the complainant and the licensee will be notified by letter explaining the action taken on the dismissed complaint.

(F) If an informal hearing on the Agreed Order is recommended, the Executive Director or Investigator shall, by certified mail, mail to the licensee an Agreed Order with a list of allegations. The conference is conducted in accordance with the Texas Government Code Annotated §2001.054 et. seq., and is part of the investigatory process. The licensee is advised that he or she has the right to counsel. The allegations are presented to the licensee and the licensee is given every opportunity to present his or her side of the issue. The licensee shall also have the right to waive the conference, in which case the investigation shall proceed to the next step in the disciplinary process. In attendance at the conference are the Executive Director or Investigator, the Investigative Liaison assigned to the case, the Assistant Attorney General representing the Board, a public member of the board, and the complainant if the complainant desires to attend.

(G) After the licensee responds to the allegations, the Executive Director or Investigator, Investigative Liaison, and the Assistant Attorney General will review the file and the licensee's response and recommend the disposition of the complaint. If it is determined that a violation has not occurred, the case will be dismissed and all parties to the allegations will be notified by letter explaining the action taken on the dismissed complaint. The Executive Director or Investigator will advise the Board at each scheduled board meeting of the number of complaints dismissed since the last board meeting. The information furnished will consist of a status report of the total number of cases opened and closed for the time period in between each board meeting or quarterly performance measure report [~~summary of the allegations, investigation conducted, and reasons for dismissal~~].

(H) If it is determined that a violation has occurred and a penalty/disciplinary action is warranted, within 14 days of the date of determination a proposed agreed order shall be mailed by certified mail to the licensee. The order must include a brief summary of the alleged violation and a statement that the licensee waives the right to a hearing on the occurrence of the violation and the amount of the penalty/disciplinary action. In determining the penalty/disciplinary action, the board will utilize the complaint penalty schedule to assess the appropriate sanction based on the category of complaint and severity level.

(I) Within 20 days after the date the licensee receives the proposed order, the licensee may, in writing, accept the determination and recommended penalty, disciplinary action of the Executive Director or Investigator, propose a counter-offer, or may request, in writing, a hearing on the occurrence of the violation and the amount of the penalty.

(J) If the licensee accepts the determination and recommended penalty/disciplinary action of the Executive Director or Investigator, the Board by order shall approve the proposed agreed order or shall amend the proposed agreed order as a counter-offer.

(c) Docketed Complaint and Hearing.

(1) If the licensee declines the proposed agreed order and requests a hearing or if the licensee fails to respond timely to the proposed agreed order, a docketed complaint will be drafted and assigned a docket number. The complaint is reviewed by the Assistant Attorney General who then returns it to the agency where corrections are made, if indicated. The date the Executive Director or Investigator files the complaint with SOAH is the official date of filing the docketed complaint with the Board. The docketed complaint is then served on the licensee by certified mail or personal service at least ten days prior to a scheduled hearing.

(2) The Executive Director or Investigator shall request a hearing and give notice of the hearing to the licensee. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact, conclusions of law and promptly issue to the Board a proposal for a decision about the occurrence of the violation, the proposed disciplinary action, and the amount of the proposed penalty, if any. Based on findings of fact, conclusions of law, and proposal for a decision, the Board by order may find that a violation has occurred, impose a penalty, impose disciplinary action, or may find that no violation occurred. The complainant shall be promptly advised by letter of the final disposition of the complaint.

(3) The notice of the Board's order given to the licensee under the Texas Government Code Annotated Chapter 2001 et. seq. and its subsequent amendments must include a statement of the right of the licensee to judicial review of the order.

(d) Licensee's Record. All actions taken by the Board against a licensee shall be made a permanent part of the licensee's record at the Board office reportable on the Board's website and reportable to the NPDB-HIPDB (National Practitioner Databank - Healthcare Integrity Protection Databank).

(e) Use of Private Investigators. Private investigators may be utilized in any case filed with the Board. Private investigators will be employed only when it is economically advantageous to the Board or when it is not practical for agency staff to travel to a distant destination or to another state. Private investigators will be utilized in accordance with existing state purchasing rules of the General Services Commission and will be utilized with the approval of the Executive Director and Investigative Liaison.

(f) Criminal Investigations.

(1) The Board shall cooperate with and assist any law enforcement, criminal justice or government agency in the investigation of criminal allegations or information obtained by the board in the course of an investigation that indicates that a crime may have been committed. Criminal information in the possession of the Board is confidential and may be disclosed only as necessary to conduct the investigation.

(2) The Board shall conduct criminal background checks of applicants for licensure and as necessary, for licensees under investigation, through the Texas Department of Public Safety and the Federal Bureau of Investigation as authorized by law. In pursing an investigation for licensure, the Board may also contact any other law enforcement agencies to obtain information as necessary to fulfill legislative mandates.

(3) Criminal background checks include, but are not limited to, fingerprint checks, conviction histories, arrest histories, name histories, personal identifier histories, review of court/judicial documents and histories of involvement with law enforcement or any other criminal justice agencies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005541
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 305-7000

♦ ♦ ♦

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.91

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.91, concerning Reportable Events.

The amendment to §501.91 will require the reporting of settlement agreements not related to the practice of public accountancy.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to protect the public from exposure to licensees that are not providing services in accordance with state law.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 8, 2010. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§501.91. Reportable Events.

(a) A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee has knowledge of these events:

(1) the conviction or imposition of deferred adjudication of the licensee of any of the following:

(A) a felony;

(B) a crime of moral turpitude;

(C) any crime of which fraud or dishonesty is an element or that involves alcohol abuse or controlled substances; and

(D) any crime related to the qualifications, functions, or duties of a public accountant or certified public accountant, or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary.

(2) the cancellation, revocation, or suspension of a certificate, other authority to practice, or refusal to renew a certificate or other authority to practice as a certified public accountant or a public accountant, by any state, foreign country or other jurisdiction;

(3) the cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency or other licensing agency;

(4) an unappealable adverse finding in any state or federal court or an agreed settlement in a civil action against the licensee concerning professional accounting services or professional accounting work or a finding of a breach of fiduciary duty, fraud or misappropriation; or

(5) the loss of a professional license from another state or federal regulatory agency such as an insurance license or a securities license, resulting from an unappealable adverse finding.

(b) The report required by subsection (a) of this section shall be signed by the licensee and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(c) Nothing in this section imposes a duty upon any licensee to report to the board the occurrence of any of the events set forth in subsection (a) of this section either by or against any other licensee.

(d) As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not be actually imposed until all appeals are exhausted.

(e) Interpretive Comment: A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community and further defined in §501.90(18) and §519.7 of this title (relating to Discreditable Acts and Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board and Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005528
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

CHAPTER 511. ELIGIBILITY
SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.51

The Texas State Board of Public Accountancy (Board) proposes new §511.51, concerning Educational Definitions.

New §511.51 will define terms used in the educational requirements section of this subchapter.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be none.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the new rule will be an understanding of the educational requirements terms.

The probable economic cost to persons required to comply with the new rule will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the new rule does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 8, 2010. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§511.51. Educational Definitions.

(a) "AACSB-International" means the Association to Advance Collegiate Schools of Business-International

(b) "ACBSP" means the Accreditation Council for Business Schools and Programs

(c) "Accelerated course" means a course in which a student earns semester/quarter hour credit that is completed in less time than required in subsection (m) of this section.

(d) "CHEA" means the Council for Higher Education Accreditation.

(e) "Contact hour" means the amount of time the student spends in face-to-face sessions in the class testing and receiving guided instruction from a faculty member at an institution of higher education where one hour of scheduled class time is equal to 50 minutes.

(f) "Distance Education" means the formal educational process that occurs when students and instructors are not in the same physical setting (face-to-face) for the majority (more than 50 percent) of instruction.

(g) "Distance Education Course" means a course in which a majority (more than 50 percent) of the instruction occurs when the student(s) and instructor(s) are not in the same physical setting. Two categories of distance education courses are defined:

(1) "Fully Distance Education Course" means a course which has face-to-face sessions totaling no more than 15 percent of the instructional time. Examples of face-to-face sessions include orientation, laboratory, exam review, or an in-person test.

(2) "Hybrid/Blended Course" means a course in which a majority (more than 50 percent but less than 85 percent), of the planned

instruction occurs when the students and instructor(s) are not in the same physical setting.

(h) "Institution of Higher Education or Institution" means any U.S. public or private senior college or university which confers a baccalaureate or higher degree to its students completing a program of study required for the degree.

(i) "Quarter hour" is the unit of measurement based upon an institution of higher education system that divides the academic year into three equal sessions of 10 to 11 weeks. A quarter hour represents proportionately less work than a semester hour because of the shorter session and is counted as 2/3 of a semester hour for each hour of credit.

(j) "Reporting institution" means the institution of higher education in the state that serves as the clearinghouse for educational institutions of higher education in Texas. Currently, the University of Texas-Austin is the reporting institution for the state of Texas.

(k) "SACS" means the Southern Association of Colleges and Schools-Commission on Colleges.

(l) "Self-paced course" means a course in which a student earns semester/quarter hour credit that is completed in less or more than the time required in subsection (m) of this section.

(m) "Semester hour" is the unit of measurement used by an institution of higher education that divides the academic year into two equal sessions of 15 to 16 weeks each or 10 to 12 weeks during the summer session.

(1) A single semester hour is one lecture or discussion hour per week of scheduled class time spent in the classroom, for testing and guided instruction from a faculty member during the session.

(2) One three-hour semester class represents at least 45 contact hours but not more than 48 contact hours of class time, for testing and guided instruction from a faculty member.

(n) "THECB" means the Texas Higher Education Coordinating Board.

(o) "Traditional education" means the formal educational process determined by the institution of higher education when students and instructors are in the same physical setting (face-to-face) for the majority (more than 50 percent) of instruction.

(p) "Traditional education course" means a synchronous course pursuant to subsection (o) of this section where:

(1) students and instructor(s) are present for classes; and,

(2) students receive established guided curriculum from instructor(s), and students' knowledge and understanding of curriculum is evaluated throughout the course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005529
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

22 TAC §511.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.52, concerning Recognized Colleges and Universities.

The amendment to §511.52 will establish the minimum criteria for courses offered by colleges and universities that qualify a candidate to sit for the CPA exam.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to provide the public with properly educated licensees capable of providing the public with competent accounting services.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 8, 2010. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.52. Recognized Institutions of Higher Education [~~Colleges and Universities~~].

(a) In considering the qualifications of an applicant, the board shall generally accept institutions of higher education that are regionally accredited by SACS and that meet the following requirements: [~~colleges or universities which offer a baccalaureate or higher degree, and which recognized by one of the following accrediting associations:~~]

(1) offer a baccalaureate or higher degree; and

(2) offer college coursework that conforms with the definitions and standards of the THECB or SACS for contact hours, semester hours and quarter hours, and as defined by §511.51.

[~~(1) Middle States Association of Colleges and Schools;~~]

[~~(2) North Central Association of Colleges and Schools--Higher Learning Commission;~~]

[~~(3) New England Association of Schools and Colleges--Commission on Institutions of Higher Education;~~]

[~~(4) Northwest Commission on Colleges and Universities;~~]

[~~(5) Western Association of Schools and Colleges--Commission for Senior Colleges; or~~]

[~~(6) Southern Association of Colleges and Schools--Commission on Colleges.~~]

(b) Effective January 1, 2013 [~~June 1, 2011~~], the board will accept institutions of higher education, that are regionally accredited by an organization recognized by CHEA and that meet the following requirements: [~~schools accredited by the Southern Association of Colleges and Schools--Commission on Colleges and the schools accredited by the associations identified in subsection (a)(1) - (5) of this section so long as the schools accredited by the identified associations offer a baccalaureate or higher degree, and have a business school or accounting program accreditation recognized by the Council for Higher Education Accreditation (CHEA) as a specialized or professional accrediting organization. Examples of a specialized or professional accrediting organization are the Association to Advance Collegiate Schools of Business-International (AACSB) or the Association of Collegiate Business Schools and Programs (ACBSP).~~]

(1) offer a baccalaureate or higher degree;

(2) offer college coursework that conforms with the definitions and standards of the THECB or SACS for contact hours, semester hours and quarter hours;

(3) have a business school or accounting program accreditation recognized as a specialized or professional accrediting organization by CHEA. Examples of a specialized or professional accrediting organization are the AACSB and the ACBSP; and,

(4) provide evidence of meeting equivalent accreditation requirements of SACS.

(c) An institution of higher education [~~A university~~] that does not meet the requirements of subsection (a) or (b) of this section may appeal to the board for consideration. An institution of higher education approved [~~A university recognized~~] by the board under this provision must be reconsidered [~~for approval~~] by the board on the fifth year anniversary of the approval. Institutions of higher education [~~Universities~~] that do not request or receive re-approval will no longer be recognized under this provision at the conclusion of the fifth year anniversary.

(d) The board may receive assistance from the reporting institution in the State of Texas in evaluating an [~~educational~~] institution of higher education. [~~Correspondence schools and vocational schools do not meet the criteria.~~]

(e) The board recognizes and accepts only community colleges that offer an accounting program reviewed and accepted by the board. (See §511.57(a)(2) and §511.58(a) of this chapter for degree and course requirements).

(f) Correspondence schools and programs do not meet the criteria of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005530
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

22 TAC §511.57

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.57, concerning Definition of Accounting Courses.

The amendment to §511.57 will require CPA candidates in order to be eligible to sit for the exam to obtain a minimum level of traditional learning contact hours and a minimum level of blended learning hours as defined by §511.51.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to provide the public with properly educated licensees capable of providing the public with competent accounting services.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 8, 2010. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.57. Qualified [~~Definition of~~] Accounting Courses.

(a) An individual shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board recognized [~~educational~~] institution of higher education as defined by board rule, §511.52 and present [~~a~~] valid transcript(s) [~~transcript~~] from board recognized institution(s) [~~that institution~~] that show [~~shows~~] degree credit for no [~~not~~] fewer than 30 semester hours of accounting courses as defined in subsection (c) of this section; or

(2) Hold a baccalaureate or higher degree from a board recognized [~~educational~~] institution of higher education as defined by board rule, §511.52, and after obtaining the degree, complete the requisite [~~not fewer than~~] 30 semester hours of accounting courses, as defined in subsection (c) of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by board rule, §511.52, and that the accounting programs offered at the community colleges are reviewed and accepted by the board.

(b) Credit for hours taken at board recognized institutions of higher education [~~colleges and universities~~] using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(c) The board will accept not fewer than 30 semester [~~credit~~] hours of accounting courses [~~without repeat~~] from the courses listed below. A course that has been taken more than once may only be counted once toward the required hours. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the Uniform CPA Examination. A board recognized [~~educational~~] institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. Until January 1, 2013, at [~~At~~] least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of the transcript-issuing institution. Effective January 1, 2013, at least 24 of these hours must be traditional education courses that contain the equivalent of 15 weeks of instruction comprised of a minimum of 15 contact hours per semester hour as defined by board rule, §511.51. Also effective January 1, 2013, the remaining 6 hours may be courses offered as distance education or traditional education courses that comply with §511.51 of this title and are obtained at institutions of higher education that are regionally accredited by SACS or that comply with §511.52. The subject-matter content should be derived from the Uniform CPA Examination Content Specifications [~~Specification~~] Outline and cover some or all of the following:

(1) financial accounting and reporting for business organizations that may include:

(A) intermediate accounting;

(B) advanced accounting;

(C) accounting theory;

(2) managerial or cost accounting (excluding introductory level courses);

(3) auditing and attestation services;

(4) internal accounting control and risk assessment;

(5) financial statement analysis;

(6) accounting research and analysis;

(7) up to twelve semester hours of taxation (including tax research and analysis);

(8) financial accounting and reporting for governmental and/or other nonprofit entities;

(9) up to twelve semester hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education [~~college or university~~] accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(10) fraud examination;

(11) international accounting and financial reporting; and

(12) an accounting internship program (not to exceed 3 semester hours) which meets the following requirements:

(A) the accounting knowledge gained is equal to or greater than the knowledge gained in a traditional accounting classroom setting;

(B) the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;

(C) the internship plan is approved in advance by the faculty coordinator;

(D) the employing firm provides a significant accounting work experience with adequate training and supervision of the work performed by the student;

(E) the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;

(F) the student keeps a diary comprising a chronological list of all work experience gained in the internship;

(G) the student writes a paper demonstrating the knowledge gained in the internship;

(H) the student and/or faculty coordinator provides evidence of all items upon request by the board;

(I) the internship course shall not be taken until a minimum of 12 semester hours of upper division accounting course work has been completed; and,[.]

(J) the internship course shall be the equivalent of a traditional course.

(13) At its discretion, the board may accept up to three semester hours of credit as accounting [~~for~~] course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (12) of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing of the course's [~~its~~] merit and content.

(d) Effective July 1, 2011, the board requires that a minimum of two semester [~~credit~~] hours in research and analysis relevant to the course content described in subsection (c)(6) or (7) of this section is completed. The semester hours may be obtained through a discrete course or offered through an integrated approach. If the course content is offered through integration, the institution of higher education [~~university~~] must advise the board of the course(s) that contain the research and analysis content.

(e) The following types of introductory courses do not meet the accounting course definition in subsection (c) of this section:

(1) elementary accounting;

(2) principles of accounting;

(3) financial and managerial accounting;

(4) introductory accounting courses; and

(5) accounting software courses.

(f) Any CPA review course offered by an [~~educational~~] institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(g) Courses not offered in accordance with this section, including those offered in an accelerated or self-paced format, or by correspondence, do not qualify for purposes of meeting the educational requirements to take the CPA examination.

(h) An ethics course required in §511.58(c) shall not be used to meet the accounting course definition in subsection (c) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005531
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

CHAPTER 519. PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.7, concerning Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board.

The amendment to §519.7 will add the misdemeanor conviction of "hindering apprehension or prosecution" to the list of misdemeanors that would subject a licensee to disciplinary action.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to protect the public from or provide notice to the public of a licensee's criminal act that could reflect on the licensee's honesty.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 8, 2010. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§519.7. Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board.

(a) Final conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision in connection with misdemeanors that involve dishonesty or fraud may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for any crime involving dishonesty or fraud to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve dishonesty or fraud directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve dishonesty or fraud:

(1) Theft;

(2) Theft of Service;

(3) Tampering with Identification Numbers;

(4) Theft of or Tampering with Multichannel Video or Information Services;

(5) Manufacture, Distribution, or Advertisement of Multichannel Video or Information Services Device;

(6) Sale or Lease of Multichannel Video or Information Services Device;

(7) Possession, Manufacture, or Distribution of Certain Instruments Used to Commit Retail Theft;

(8) Forgery;

(9) Criminal Simulation;

(10) Trademark Counterfeiting;

(11) Stealing or Receiving Stolen Check or Similar Sight Order;

(12) False Statement to Obtain Property or Credit;

(13) Hindering Secured Creditors;

(14) Credit Card Transaction Record Laundering;

(15) Issuance of Bad Check;

(16) Deceptive Business Practices;

(17) Rigging Publicly Exhibited Contest;

(18) Misapplication of Fiduciary Property or Property of Financial Institution;

(19) Securing Execution of Document by Deception;

(20) Fraudulent Destruction, Removal, or Concealment of Writing;

(21) Simulating Legal Process;

(22) Refusal to Execute Release of Fraudulent Lien or Claim;

(23) Breach of Computer Security;

(24) Unauthorized Use of Telecommunications Service;

(25) Theft of Telecommunications Service;

(26) Publication of Telecommunications Access Device;

(27) Insurance Fraud;

(28) False Alarm or Report;

(29) Engaging in Organized Criminal Activity;

(30) Violation of Court Order Enjoining Organized Criminal Activity;

(31) Unlawful Use of Criminal Instrument;

(32) Unlawful Access to Stored Communications;

(33) Burglary of Vehicles;

(34) Burglary of Coin-Operated or Coin Collection Machines;

(35) Coercion of Public Servant or Voter;

(36) Improper Influence;

(37) Gift to Public Servant by Person Subject to His Jurisdiction;

(38) Offering Gift to Public Servant;

(39) Perjury;

(40) False Report to Peace Officer or Law Enforcement Employee;

(41) Tampering With or Fabricating Physical Evidence;

(42) Tampering With Governmental Record;

(43) Fraudulent Filing of Financing Statement;

(44) False Identification as Peace Officer;

(45) Misrepresentation of Property;

(46) Record of a Fraudulent Court; and

(47) Bail Jumping and Failure to Appear.

(b) Final conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision in connection with misdemeanors that involve moral turpitude may

subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for any crime involving moral turpitude to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve moral turpitude directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve moral turpitude:

(1) Prostitution;

(2) Promotion of Prostitution;

(3) Indecent Exposure;

(4) Public Lewdness;

(5) Obscenity;

(6) Obscene Display or Distribution;

(7) Sale, Distribution, or Display of Harmful Material to Minor;

(8) Employment Harmful to Children; [~~and~~]

(9) Abuse of a Corpse; and,[~~.~~]

(10) Hindering apprehension or prosecution.

(c) Final conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision in connection with misdemeanors that involve alcohol abuse or controlled substances may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for any crime involving alcohol abuse or controlled substances to relate directly to the practice of public accountancy and may subject a certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve alcohol abuse or controlled substances directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve alcohol abuse or controlled substances:

(1) Possession of less than 28 grams of a controlled substance listed in penalty group 3 under the Texas Penal Code;

(2) Possession of less than 28 grams of a controlled substance listed in penalty group 4 under the Texas Penal Code;

(3) Manufacture, delivery or possession of a controlled substance listed in a schedule of controlled substances, but not listed in a penalty group under the Texas Penal Code;

(4) Manufacture, delivery or possession of a controlled substance analogue;

(5) Possession or delivery of marijuana;

(6) Possession or delivery of drug paraphernalia;

(7) Possession or transport of chemicals with the intent to manufacture a controlled substance; and

(8) Any misdemeanor involving intoxication under the influence of alcohol or a controlled substance.

(d) Final conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision in connection with misdemeanors that involve physical injury or threats of physical injury to a person may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because certificate or registration holders regularly deal directly with clients and other members of the public during the performance of their professional duties, often under highly stressful conditions, the public in general, and the business community in particular, rely on the stability and integrity of certificate or registration holders in the provision of accounting services. The board considers conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for any crime involving physical injury or threats of physical injury to a person to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve physical injury or threats of physical injury to a person directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve physical injury or threats of physical injury to a person:

(1) Assault;

(2) Sexual Assault;

(3) Aggravated Sexual Assault;

(4) Injury to a Child, Elderly Individual or Disabled Individual;

(5) Abandoning or Endangering a Child;

(6) Deadly Conduct;

(7) Terroristic Threat;

(8) Tampering with Consumer Products; and

(9) Leaving a Child in a Vehicle.

(e) Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers repeated violations of any criminal law to relate directly to the practice of public accountancy.

(f) A conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for a violation of any state or federal law that is equivalent to an offense listed in subsections (a) through (e) of this section is considered to directly relate to the practice of accounting and may subject a certificate or registration holder to discipline by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005532
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

CHAPTER 521. FEE SCHEDULE

22 TAC §521.6

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.6, concerning Duplication and Other Charges and Refund of Board Fees.

The amendment to §521.6 will permit the board to recover its costs to provide documents requested pursuant to the *Public Information Act*.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to place the public on notice of bearing the costs of locating, compiling and reproducing requested agency records.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 8, 2010. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§521.6. Duplication and Other Charges and Refund of Board Fees.

(a) Any costs incurred by the board upon application for or demand of any document, record, or action of the board which the board is required to provide by law or by these rules shall be recovered by the board from the individual or entity [~~borne by anyone~~] making the request or demand. The costs for the staff time incurred in locating, compiling, manipulating data and reproducing public information as well as redacting or obscuring confidential information requested shall be based upon the actual salary of the agency staff responding to the request. [~~Such document, record, or action will be furnished upon payment of the established fee.~~] Any matter deemed confidential by statute, attorney general opinion, or court order is not subject to release. The charge for requesting photocopied reproductions of any public record of the board will be the charges established by the Office of the Attorney General [~~Texas Facilities Commission~~]. The following guidelines will apply for the cost of providing mailing lists.

(1) Personnel charges will be the actual salary rate of attributable staff plus fringe benefits.

(2) Overhead charges will be determined on an actual cost recovery basis.

(b) The board may waive these charges if there is a public benefit. The executive director is authorized to determine whether a public benefit exists on a case by case basis.

(c) Sales tax, if required, will be charged on publications including, but not limited to, publications containing information on the Uniform CPA Examination and requirements for certification and licensure.

(d) Payment will be made by cash, check, or money order. No refund of any charges or fees paid to the board will be made for less than $5.00 of monies paid by mistake in excess of the correct fee, unless specifically requested in writing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005533

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.121

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.121, concerning CPE for Non-CPA Owners.

The amendment to §523.121 will require the completion of CPE for non-CPA owners prior to their ownership in a CPA firm.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to assure ethics training by non-owners in a CPA firm prior to firm ownership.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose any duties or obligations upon small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on November 8, 2010. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.121. CPE for Non-CPA Owners.

(a) Each non-CPA owner of a licensed CPA firm shall complete an average of 120 hours of CPE in each three-year period and have a minimum of 20 hours per year. These hours shall be reported on the required board forms. The failure of any non-CPA owner of a licensed CPA firm to complete and report such CPE shall be grounds for revoking the firm's license on the grounds that the owner is not qualified.

(b) The board will accept any CPE that is offered or accepted by organizations or regulatory bodies issuing any professional designation used by the non-CPA owner. All other CPE must be provided by board-accepted CPE sponsors or be otherwise approved by the board, provided however, that the board reserves the right to reject any claimed CPE.

(c) Each non-CPA, prior to acquiring any ownership interest in [~~owner of~~] a licensed CPA firm, shall complete a board-approved rules and ethics course in accordance with §523.130 of this title (relating to Ethics Course Requirements for Licensees).

(d) Each non-CPA owner must take a four hour ethics course that has been approved by the board pursuant to §523.131 of this title (relating to Board Approval of Ethics Course Content) every two years. Non-CPA owners shall report completion of the course on the annual firm renewal notice at least every second year.

(e) The board has the right to audit any CPE hours claimed. A firm shall provide the board all information required for this audit in accordance with §501.93 of this title (relating to Responses) and the firm shall be responsible for its non-CPA owner's cooperation with the audit.

(f) Subsections (a) through (e) of this section apply only to non-CPA owners who are residents of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005534

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS AND OTHER REQUIREMENTS

28 TAC §§7.402 - 7.404

The Texas Department of Insurance (Department) proposes amendments to §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs); new §7.403, concerning a transition period for certain county mutual insurance companies to comply with new minimum surplus requirements; and new §7.404, concerning a transition period for stipulated premium insurance companies to comply with new minimum capital and surplus requirements.

The proposed amendments to §7.402 are necessary to implement and update the risk-based capital and surplus requirements for year-end 2009 and for year-end 2010 for property and casualty insurers, life insurance companies, fraternal benefit societies, stipulated premium insurance companies, HMOs, and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank by (i) adopting the 2009 NAIC risk-based capital formulas and instructions to be used for year-end 2009; (ii) adopting the 2010 NAIC risk-based capital formulas and instructions to be used for year-end 2010; (iii) adding stipulated premium insurance companies only doing business in Texas and certain county mutual insurance companies to the list of defined "carriers" which must comply with the section; and (iv) specifying the filing requirements for the 2009 and 2010 risk-based capital reports and supplemental reports and forms. Insurers and HMOs subject to §7.402 are referred to collectively in this proposal as "carriers". Proposed new §7.403 is necessary to implement the Insurance Code §912.056(f), as added by House Bill (HB) 2449, 81st Legislature, Regular Session, which provides a transition period for certain county mutual insurance companies to comply with the new minimum surplus requirements. Proposed new §7.404 is necessary to implement the Insurance Code §884.054(a) and (c), as amended by House Bill (HB) 2570, 81st Legislature, Regular Session, which provides a transition period for stipulated premium insurance companies to comply with the new minimum capital and surplus requirements.

The proposed amendments to §7.402 are necessary to regulate risk-based capital and surplus requirements for carriers. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The updated NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and/or surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure. The proposed amendments are necessary to adopt by reference the 2009 NAIC risk-based capital formulas to be used for year-end 2009. These formulas include the 2009 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2009 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2009 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2009 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. Specifically, the proposed amendments to §7.402(d), in paragraphs (1) - (4), replace the date "2008" with "2009." The proposed amendments also are necessary to adopt by reference the 2010 NAIC risk-based capital formulas to be used for year-end 2010. These formulas include the 2010 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2010 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2010 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2010 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. Specifically, the proposed amendments to §7.402(d) add new paragraphs (5) - (8).

The proposed amendments to §7.402 are also necessary to add stipulated premium insurance companies only doing business in Texas and certain county mutual insurance companies to the list of defined "carriers" which must comply with the section. Under the amendments to §7.402(b)(1) and (e)(3), as proposed, stipulated premium insurance companies only doing business in Texas will be subject to the section's risk-based capital requirements for life insurance companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. Specifically, the proposed amendments to §7.402(b)(1)(i) add the word "insurance" after the phrase "stipulated premium" and before the word "companies;" (ii) delete the phrase "doing business in other states;" and (iii) delete the sentence specifying "This section does not apply to stipulated premium companies only doing business in Texas." Proposed new §7.402(e)(3) requires stipulated premium insurance companies only doing business in Texas to file the 2010 risk-based capital report and any supplemental forms and reports. However, proposed new §7.402(e)(3) does not require these type of carriers to file the 2009 risk-based capital report. Under the amendments to §7.402(b)(2) and (e)(4), as proposed, county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) will be subject to the section's risk-based capital requirements for property and casualty companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. Specifically, the proposed amendments to §7.402(b)(2) clarify the scope of the rule's application to property and casualty companies by adding the phrase "including county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f), but. . ." and at the end of the sentence adds the phrase "subject to the Insurance Code §822.205." The proposed amendments to §7.402(b)(2) also delete the phrase "that write business only in this state and are not required to have capital

stock". Proposed new §7.402(e)(4) requires county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) to file the 2010 risk-based capital report and any supplemental forms or reports. However, proposed new §7.402(e)(4) explicitly provides that these type of carriers are not required to file the 2009 risk-based capital report.

Also, the proposed amendments to §7.402(e)(1) and (2) clarify the filings requirements for all other types of carriers subject to the section. Specifically, the proposed amendments to §7.402(e)(1) clarify that all companies subject to this section, except fraternal benefit societies, stipulated premium companies doing business only in Texas, and county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f), are required to file electronic versions of the 2009 and the 2010 RBC reports and any supplemental RBC forms and reports with the NAIC in accordance with and by the due dates specified in the RBC instructions. The proposed amendments to §7.402(e)(2) clarify that fraternal benefit societies are required to (i) prepare, maintain, and file a paper copy of the 2009 RBC report and any supplemental RBC forms and reports with the Department whenever requested by the Department; and (ii) to prepare and maintain a paper copy of the 2010 RBC report and any supplemental RBC forms and reports by March 1, 2011, and make the reports and forms available for review whenever requested by the Department. Additionally, the proposed amendments to §7.402 include new subsection (g)(7) which imposes a new substantive requirement for year-end 2009, and each calendar year thereafter, that subjects health insurers to a trend test if their total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. In that case, and if the result of the trend test as determined by the formula is "YES", the health insurer will be subject to the company action level requirements and will need to file additional reporting with the Department as a result of the trend test. This new requirement is necessary because it will allow for early identification of insurers that are likely to reach a company action level in the following year. This is based on research by the NAIC's Health Risk-Based Capital (E) Working Group that showed a strong correlation between the trend test's criteria and the triggering of at least the company action level in the following year. By triggering a company action level sooner, insurers can plan better for their capital needs and the Department will receive information related to its solvency regulatory duties which is necessary to protect the interests of the public. Specifically, the proposed amendments to §7.402(g) add new paragraph (7) containing the new testing requirement that subjects health insurers to a trend test if their total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent.

Copies of the documents proposed in §7.402 for adoption by reference are available for inspection in the Financial Analysis Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas.

The Department also proposes new §7.403 to provide a transition period for certain county mutual insurance companies to comply with the new surplus minimums required by the Insurance Code §912.056(f), as amended by HB 2449, 81st Legislature, Regular Session. In part, HB 2449 amended the Insurance Code §912.056 by adopting new §912.056(f), which requires that certain specified county mutual insurance companies maintain a higher minimum unencumbered surplus. HB 2449 also enacted new Insurance Code §912.056(g), which requires the Commissioner to adopt a transition period for these specified county mutual insurance companies to meet the requirements of §912.056(f) and for the pro rata elimination of any deficiencies in the amounts required under §912.056(f) over a period of not less than five years. Specifically, new §7.403(a) states that the new section applies to county mutual insurance companies that cede 85 percent or more of the their direct and assumed risks to one or more nonaffiliated reinsurers, and further provides that such companies are otherwise required to comply with the Insurance Code §912.056(f) relating to the new surplus minimums required by the Insurance Code §912.056(f), as amended by HB 2449. New §7.403(b) provides that a county mutual insurance company shall comply with §7.402 unless the company meets the express criteria contained in the Insurance Code §912.056(f). In accordance with the prescriptive requirements of the Insurance Code §912.056(g), proposed new §7.403 requires the pro rata elimination of any deficiencies in the amounts required under §912.056(f) over a period of not less than five years. Specifically, new §7.403(c) sets out a five-year graduated transition period for the county mutual insurance companies subject to the section.

The Department further proposes new §7.404 to provide a transition period for stipulated premium insurance companies to comply with the new minimum capital stock and surplus rules required by the Insurance Code §884.054 as amended by HB 2570, 81st Legislature, Regular Session. In part, HB 2570 amended the Insurance Code §884.054, which specifies the minimum capital and surplus requirements for stipulated premium insurance companies. SECTION 12 of HB 2570 requires that a stipulated premium insurance company shall increase its capital stock and surplus as required under the Insurance Code Chapter 884, as amended, not later than a date prescribed by rule by the Commissioner in connection with a schedule of intermediate increases adopted by the Commissioner to provide for a 10-year phase-in of the requirements. In accordance with the prescriptive requirements of SECTION 12 of HB 2570, proposed new §7.404 requires a stipulated premium insurance company to increase its capital stock and surplus as required under the Insurance Code Chapter 884, as amended, in connection with a reasonable schedule of intermediate increases adopted by the Commissioner to provide for a 10-year phase-in of the requirements. New §7.404(a) provides that a stipulated premium insurance company shall comply with §7.402. New §7.404(b) sets out a 10-year graduated transition period for stipulated premium insurance companies to comply with the new minimum capital stock and surplus rules required by the Insurance Code §884.054 as amended by HB 2570.

Additionally, the proposed amendments amend the title of Subchapter D by adding the phrase "and Other Requirements" after the phrase "Risk-based Capital and Surplus."

FISCAL NOTE. Mr. Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that, for each year of the first five years the proposed new and amended sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The new and amended sections will have no effect on local employment or local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each year of the first five years the proposed new and amended sections are in effect, the anticipated public benefit will be that the Department will be able to more effectively utilize existing resources in the review of the operations and

financial condition of carriers, to more efficiently monitor solvency of the carriers subject to the proposal, and to implement the most current risk-based capital requirements. The new and amended sections will enable the Department to administer appropriate and proactive regulatory actions to protect the interests of the public against carriers whose financial condition may potentially be hazardous. The risk-based capital requirements, along with the new minimum surplus requirements for certain county mutual insurance companies and new minimum capital and surplus requirements for stipulated premium insurance companies, are methods of ensuring carrier solvency for the benefit of policyholders and others conducting business with insurers. The risk-based capital requirement ensures that a carrier has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations considering its size and risk exposure. The new minimum capital and/or surplus requirements similarly require carriers to maintain minimum amounts of net assets to safely operate and pay policyholder claims.

With the exception of new subsection (g)(7) related to health insurers, the proposed amendments to §7.402 contain the same substantive risk-based capital and surplus requirements of existing §7.402 for year-end 2008 but the compliance with the requirements will be based on the use of the 2009 and the 2010 NAIC risk-based capital formulas. Therefore, carriers previously subject to the rule will incur the same types of costs for year-end 2009 and for year-end 2010 to comply with these requirements that were incurred for year-end 2008. The Department does not anticipate that any new, incremental costs will be incurred by carriers that were previously subject to §7.402 as a result of the proposed amendments. Furthermore, there is no cost to individuals.

However, because the scope of proposed §7.402(b) is amended to also include stipulated premium insurance companies doing business only in Texas and certain county mutual insurance companies, all of the costs for these specific carriers to now comply with the rule are set out below.

Section 7.402.

The Department has determined that the requirements of §7.402, which are proposed to be expanded to apply to stipulated premium insurance companies only doing business in Texas and to certain county mutual insurance companies, contain two separate sets of requirements that must be analyzed in order to determine costs to carriers required to comply with the proposal. The two sets of requirements that may result in costs to carriers relate to (1) §7.402(b), (d), and (e) concerning risk based capital reports; and (2) §7.402(g)(1), (2), (5), (6), and proposed new (7) concerning additional reporting requirements.

Section 7.402(b), (d), and (e) concern, respectively, the scope of §7.402, the adoption of the risk-based capital formulas by reference, and the filing requirements for the subject carriers. Section 7.402(b), (d), and (e) require, regardless of size, certain property and casualty insurers, certain life insurance companies, fraternal benefit societies, stipulated premium insurance companies, HMOs, and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank (the term "carriers" refers to all of these entities) to complete a risk-based capital report and reflect the results of that report in their financial statements filed with the Department. Section 7.402 does not apply to certain types of specified insurers and certain specified insurers with limited operations. Specifically, §7.402(b)(1) provides that §7.402 does not apply to any insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that is $10,000 or less. Further, the scope indicated in §7.402(b)(1) does not include certain carriers regulated by the Department, such as a statewide mutual assessment association, a local mutual aid association, a mutual burial association and an exempt association.

Certain carriers that have business subject to §7.402(d)(1) are also required to perform risk-based capital calculations pursuant to the 2008 life risk-based capital C-3 Phase II instructions. This requirement relates to certain unique types of annuity business that is generally written only by large carriers. The C-3 Phase II calculations are considered a more appropriate measure of the capital requirement for the interest rate risks and market risks associated with this type of annuity business, by requiring carriers to evaluate how various guarantees react to changes in equity markets and interest rates. The less than 10 large domestic carriers expected to be affected by the 2009 life risk-based capital C-3 Phase II instructions will incur ongoing annual actuarial and computer personnel costs to perform the C-3 Phase II calculations. The Department estimates that these actuarial personnel costs will range from $25 per hour to approximately $300 per hour. Computer personnel costs are estimated to range from $25 per hour to approximately $150 per hour. The annual costs for each of these few large domestic carriers in Texas are estimated to range from one-half of one percent to one percent of the annual costs of administering each of the carrier's business affected by the C-3 Phase II requirements. The Department anticipates that such annual costs per carrier are believed to be similar for each foreign carrier in Texas with business subject to these requirements. The Department's estimations are based upon discussions with industry representatives familiar with resources and costs needed for these computations. Discussions with industry representatives involved several of the large domestic carriers in Texas estimated to have over half of the domestic carrier variable annuity business in Texas as measured on the basis of accumulation value for this business. Also, regardless of size, carriers specified in §7.402(b) that fail to maintain capital and surplus in accordance with the specified levels in §7.402(g)(1), (2), (5), (6), and (7) are required to prepare and implement a comprehensive financial plan under §7.402(g)(1), (2), (5), (6), and (7).

Any carrier specified in §7.402(b) is required to comply with the requirements in §7.402(d) and (e) to prepare a risk-based capital report and reflect the results of the report in the carrier's financial statements filed with the Department. These costs will vary from carrier to carrier based on various factors, which include the size and type of the carrier, the character of its investments, the kinds and nature of the risks insured, the type of software used by the carrier to complete its annual statement, and employee compensation expenses. Under §7.402, each carrier subject to §7.402(b), (d), and (e), regardless of size, is required to acquire NAIC risk-based capital software at a cost of approximately $650 per entity for each carrier. The labor cost to transfer the information from a carrier's records to the applicable report will vary depending on the size of the carrier and the character of its investments; the transfer by larger carriers and carriers with more complex investments will generally take longer. If

a carrier uses the annual statement software that conforms to NAIC specifications provided by authorized vendors to prepare its annual report, and if that software is linked to the risk-based capital formula software, the Department estimates that the information can be transferred and the formula completed in four hours or less. If the annual statement software is not linked to the risk-based capital formula, the Department estimates that a carrier will be able to transfer the information from its records to the risk-based formula in eight to 16 hours. The Department's estimations are based upon discussions with industry representatives who are responsible for maintaining accounting records for carriers. It is anticipated that a carrier, regardless of size, will utilize an employee who is familiar with the accounting records of the carrier and accounting practices in general. The Department estimates that the compensation for this employee will range from approximately $20 to $40 an hour. After the completion of the transfer of information, the resulting risk-based capital report will likely be reviewed by an officer of the carrier who is responsible for the preparation of the financial reports of the carrier. The Department estimates that such officers are compensated at a range from approximately $40 per hour to approximately $100 per hour, or more. The Department also estimates that large carriers generally will compensate these officers at the higher end of the salary range. Therefore, based on the Department's experience, the cost of review of the risk-based capital report for small carriers will typically be less than the cost for large carriers.

Section 7.402(g)(1), (2), (5), (6), and proposed new (7) concern reporting requirements for certain carriers and certain remedial actions the Commissioner is authorized or required to take based upon a carrier's specific risk-based capital calculations. A few carriers (estimated to be less than one percent of the total carriers doing business in Texas) may need to prepare and file additional reporting with the Department at the company action level, as provided in §7.402(g)(1), (2), (5), (6), and proposed new (7) relating to health insurance carriers. The costs of this reporting will vary by company size and complexity, as well as the amount of risk that each company assumes, but will generally involve an employee who is familiar with the accounting records of the carrier and is compensated at an estimated rate from $20 to $40 per hour. Assistance from actuarial staff may be required, and actuarial personnel costs is estimated to range from $25 per hour to approximately $300 per hour. The additional reporting requirements typically will involve the chief financial officer or other similar officer responsible for preparing the financial reports; such officers are generally compensated at hourly rates that may range from $40 per hour to approximately $300 per hour. The Department also estimates that large carriers generally will compensate these officers at the higher end of the salary range. Therefore, based on the Department's experience, the costs of preparation and filing of the additional reporting to the Department at the company action level are estimated to be relatively less for small and micro business carriers compared to large business carriers. Company action level reporting and its associated costs are intended to stave off other, higher costs that impacted carriers will likely incur absent their timely action to address the underlying concerns. Company action level reporting enables the Department to administer appropriate and proactive regulatory actions in order to protect the interests of the public against carriers whose financial condition may potentially be hazardous.

The Department does not anticipate any new, incremental costs as a result of the adoption of the 2009 and 2010 risk-based capital formulas to require a level of capital that is significantly different from the capital requirements for 2008. A relatively large percentage of carriers have been required by the Department to comply with the risk-based capital requirements for several years. For stipulated premium insurance companies only doing business in Texas and the county mutual insurance companies now required to comply with the 2010 risk-based capital requirements due to the proposed expansion of the scope of §7.402, the costs associated with compliance will be that same as that for other carriers as set out herein. However, the function of the risk-based capital formula is to protect policyholders from the effects of insolvency, which may require some carriers to increase their capital and/or surplus, or otherwise reduce the amount of risk that the carriers assume to ensure they have an adequate amount of capital. To the extent any carrier must increase its capital and/or surplus or as a result of the risk-based capital requirements, that cost is the amount of capital and/or surplus or other action required and is a result of the statutory requirements in the Insurance Code Chapter 404 and §§441.001, 441.005, 441.051, 441.052, 822.210, 822.211, 841.205, 841.206, 843.404, and 884.206. Moreover, as certain stipulated premium insurance companies and county mutual insurance companies were not previously subject to risk-based capital requirements pursuant to prior Department regulations, the Department anticipates that these specific carriers will be more likely to be required to increase their capital and/or surplus or take other action as a result of the application of the proposed amendments when compared to carriers that were previously subject to risk-based capital requirements. To the extent that additional capital and/or surplus or other action may be required, the exact cost of compliance will vary significantly between carriers based upon a number of factors, which include: (1) the amount of capital and/or surplus currently maintained by the carrier; (2) the amount of capital and/or surplus required based upon the application of the risk-based capital requirements under the proposed new section; (3) the size and complexity of the carrier; and (4) the amount and complexity of the underwriting, financial, and investment risks that are assumed by the carrier.

Section 7.403.

The Department also proposes new §7.403 to provide a transition period for certain county mutual insurance companies to comply with the new minimum surplus requirements of the Insurance Code §912.056(f), as amended by HB 2449, 81st Legislature, Regular Session. In part, HB 2449 amended the Insurance Code §912.056 by adopting new §912.056(f), which requires that certain specified county mutual insurance companies maintain a higher minimum unencumbered surplus. HB 2449 also enacted new Insurance Code §912.056(g), which requires the Commissioner to adopt a transition period for these specified county mutual insurance companies to meet the requirements of §912.056(f) and for the pro rata elimination of any deficiencies in the amounts required under §912.056(f) over a period of not less than five years. In accordance with the prescriptive requirements of the Insurance Code §912.056(g), proposed new §7.403 requires the pro rata elimination of any deficiencies in the amounts required under §912.056(f) over a period of not less than five years.

The adoption of new proposed §7.403 is expressly required by the Insurance Code §912.056(g). Accordingly, the Department has determined that the cost of compliance with new proposed §7.403 is attributable to the Insurance Code §912.056(g), and not as a result of the adoption of this proposed section.

Section 7.404.

The Department further proposes new §7.404 to provide a transition period for stipulated premium insurance companies to comply with the new capital stock and surplus minimums required by the Insurance Code §884.054, as amended by HB 2570, 81st Legislature, Regular Session. In part, HB 2570 amended the Insurance Code §884.054, which specifies the minimum capital and surplus requirements for stipulated premium insurance companies. SECTION 12 of HB 2570 requires that a stipulated premium insurance company shall increase its capital stock and surplus as required under the Insurance Code Chapter 884, as amended, not later than a date prescribed by rule by the Commissioner in connection with a schedule of intermediate increases adopted by the Commissioner to provide for a 10-year phase-in of the requirements. In accordance with the prescriptive requirements of SECTION 12 of HB 2570, proposed new §7.404 requires a stipulated premium insurance company to increase its capital stock and surplus as required under the Insurance Code Chapter 884, as amended, in connection with a reasonable schedule of intermediate increases adopted by the commissioner to provide for a 10-year phase-in of the requirements.

The adoption of new proposed §7.404 is expressly required by the Insurance Code §884.054(g) and SECTION 12 of HB 2570. Accordingly, the Department has determined that the cost of compliance with new proposed §7.404 is attributable to the Insurance Code §884.054 and SECTION 12 of HB 2570, respectively, and not as a result of the proposed section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. The Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. The Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. The Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in the Government Code §2006.002(b) - (d) for small businesses.

As required by the Government Code §2006.002(c), the Department has determined that the proposed amendments to §7.402, with the exception of new subsection (g)(7), contain the same requirements also applicable to the risk-based capital and surplus requirements for year-end 2008 but now using the 2009 and 2010 risk-based capital formulas. Therefore, the same types of costs that were incurred for year-end 2008 to comply with these requirements will also be incurred for year-end 2009 and for year-end 2010. The Department does not anticipate any new, incremental costs as a result of the proposed amendments for carriers that are subject to the existing requirements of §7.402. As previously detailed, however, the scope of the proposed new requirements in §7.402 for 2010 has been expanded to include stipulated premium insurance companies only doing business in Texas and certain county mutual insurance companies and, therefore, the Department provides the following analysis of the economic impact on the stipulated premium insurance companies and certain county mutual insurance companies which must now comply with §§7.402, 7.403, and 7.404.

Section 7.402.

The Department has determined that §7.402 contains two separate sets of requirements which will now apply to all carriers, unless they are expressly exempted, including stipulated premium insurance companies only doing business in Texas and certain county mutual insurance companies which are also small and micro business carriers. The two sets of requirements that may result in costs to carriers relate to (1) §7.402(b), (d), and (e); and (2) §7.402(g)(1), (2), (5), (6), and proposed new (7). As previously stated in the Public Benefit/Cost Note part of this proposal, all of the requirements in the existing §7.402 continue to apply, but the compliance with the requirements will be based on the use of the 2010 risk-based capital formulas and instructions for stipulated premium insurance companies only doing business in Texas and certain county mutual insurance companies. Therefore, the same types of costs that were incurred by small and micro business carriers for year-end 2008 to comply with these requirements would be incurred by stipulated premium insurance companies only doing business in Texas and certain county mutual insurance companies for year-end 2010.

Section 7.402(b), (d), and (e) require carriers specified in §7.402(b), regardless of size, to complete a risk-based capital report and reflect the results of that report in their financial statements filed with the Department. Separate and apart from any requirements of the Government Code §2006.002(c), §7.402(b)(1) excludes certain insurers from compliance with the §7.402 requirements. These insurers are more likely to be small or micro business carriers because of the insurers' types or methods of operation. Under §7.402(b)(1), the risk-based capital requirements in §7.402 do not apply to any insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that is $10,000 or less. Further, under §7.402(b)(1), certain insurers are excluded entirely from compliance with the §7.402 requirements. These include statewide mutual assessment associations, local mutual aid associations, mutual burial associations, and exempt associations. Section 7.402(d) and (e) require carriers specified in §7.402(b), regardless of size, to maintain capital and surplus in accordance with the specified levels. The failure to do so triggers the requirements in §7.402(g) that the carrier prepare and implement a comprehensive financial plan. Certain carriers that have annuity business subject to §7.402(d)(1) are required to perform risk-based capital calculations pursuant to the proposed 2008 life risk-based capital C-3 Phase II instructions. The C-3 Phase II requirement relates to certain unique types of annuity business that are generally written only by large carriers. As required by the Government Code §2006.002(c), the Department has determined that §7.402(d)(1) will not have an adverse economic effect on any small or micro businesses, including the stipulated premium insurance companies doing business only in Texas and county mutual insurance companies added to the list of carriers subject to §7.402. The Department does not anticipate that any small or micro business carriers will have business subject to §7.402(d)(1). Therefore no small or micro business will be required to perform risk-based capital calculations pursuant to the 2008 life risk-based capital C-3 Phase II instructions.

As required by the Government Code §2006.002(c), the Department has determined that approximately 50 to 100 of the carriers specified in §7.402(b) are small or micro-business carriers that will be required to comply with the requirements in §7.402(d) and (e) to prepare a risk-based capital report and reflect the results of the report in the carrier's financial statements filed with the Department. These small or micro business carriers will incur routine costs associated with completing the risk-based capital report and reflecting the results in their financial statements filed with the Department. Also, as required by the Government Code §2006.002(c), the Department has determined that these routine costs will not have an adverse economic effect on the approximately 50 to 100 small or micro business carriers. These routine costs of compliance will vary between large business carriers and small or micro-business carriers based upon the carrier's type and size and other factors, including the character of the carrier's investments, the kinds and nature of the risks insured, the type of software used by the carrier to complete its annual statement, and employee compensation expenses. The Department's cost analysis and resulting estimated routine costs for carriers in the Public Benefit/Cost Note portion of this proposal are equally applicable to small and micro-businesses. As indicated in the Public Benefit/Cost Note analysis, these routine costs will be less for small or micro business carriers. This is primarily because small or micro business carriers will incur less labor costs in transferring information from their records to the risk-based capital reports due to their smaller and less complex investment portfolios than large business carriers. Also, small or micro business carriers may compensate officers who review risk-based capital reports at a lower salary than large business carriers.

Under the Government Code §2006.002(c), before adopting a rule that may have an adverse economic effect on small or micro businesses, an agency is required to prepare in addition to an economic impact statement a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Because the Department has determined that the routine costs to comply with this amendment, i.e., completing the risk-based capital report and reflecting the results in the carrier's financial statements filed with the Department, will not have an adverse economic effect on small or micro businesses, the Department is not required to consider alternative methods of achieving the purpose of these requirements in the proposed rule.

§7.402(g)(1), (2), (5), (6), and proposed new (7).

As required by the Government Code §2006.002(c), the Department has determined that the costs to comply with §7.402(g)(1), (2), (5), (6), and proposed new (7) may have an adverse economic effect on an estimated one or two small or micro-business carriers (i.e., all carriers subject to §7.402 including stipulated premium insurance companies doing business only in Texas or county mutual insurance companies). Such costs will only be incurred by these relatively few small or micro-business carriers because of the failure of the individual carrier to maintain capital and surplus in accordance with the levels required in §7.402(g)(1), (2), (5), (6), and (7). This failure will trigger the requirement in §7.402(g)(1), (2), (5), (6), and (7) that the carrier prepare and implement a comprehensive financial plan. This plan will be necessary to identify the conditions that contribute to the carrier's financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the carrier's financial condition, both with and without the proposed corrections, including plans to restore its capital and surplus to acceptable levels. The total cost of compliance with §7.402(g)(1), (2), (5), (6), and (7) for preparing and implementing comprehensive financial plans will depend on the size and type of the small or micro-business carrier and several other factors. The other factors will vary by company size and complexity, as well as the amount of risk that each company assumes. The Department's cost analysis and resulting estimated costs for carriers who will be required to prepare and implement a comprehensive financial plan in the Public Benefit/Cost Note portion of this proposal are equally applicable to small or micro-businesses. As indicated in the Public Benefit/Cost Note analysis, these costs will be less for small or micro-business carriers, primarily because small or micro business carriers will incur less labor costs in transferring information from their records to the risk-based capital reports due to their smaller and less complex investment portfolios than large business carriers and because small or micro business carriers may compensate officers that review risk-based capital reports at a lower salary than large business carriers. The function of the risk-based capital formulas in §7.402(d) is to protect policyholders, enrollees, and carriers from the effects of carrier insolvency. Therefore, carriers, regardless of size, that are required to submit comprehensive financial plans may also be required to increase their capital. To the extent any carrier must increase its capital as a result of the risk-based capital requirements, that cost is the amount of capital required and is a result of the statutory requirements in the Insurance Code Chapter 404 and §§441.051, 822.210, 822.211, 841.205, 841.206, 843.404, 884.206. 885.401, 982.105, and 982.106. These statutes authorize or require the Commissioner to order carriers that are operating in a potentially hazardous manner to take action to remedy such hazardous condition, which may include the requirement that the carriers increase their capital and surplus and take other remedial action.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though §7.402(g)(1), (2), (5), (6), and (7) may have an adverse economic effect on small or micro-businesses that are required to comply with these proposed requirements, the Department is not required to prepare a regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis ". . . consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

Section 7.402(g)(1), (2), (5), (6), and proposed new (7) are authorized by the following Insurance Code statutes: Chapters 404 and 441 and §§822.210, 841.205, 843.404, 884.206, 885.401, 982.105, and 982.106. The primary purpose of §§822.210, 841.205, 843.404, 884.206 885.401, 982.105, and 982.106 is to require a carrier to maintain capital and surplus in amounts that exceed the minimum amounts required by statute because of (i) the nature and kind of risks the carrier underwrites or reinsures; (ii) the premium volume of risks the

carrier underwrites or reinsures; (iii) the composition, quality, duration, or liquidity of the carrier's investments; (iv) fluctuations in the market value of securities the carrier holds; (v) or the adequacy of the carrier's reserves. These statutes further require that a rule adopted by the Commissioner be designed to ensure the financial solvency of a carrier for the protection of policyholders, enrollees, creditors, or the general public from the harmful effects of carrier insolvency. Additionally, the primary purpose of Chapters 404 and 441 is to protect insureds, enrollees or creditors, and the public against an insurer or HMO becoming insolvent, delinquent, or in a condition that renders the continuance of its business hazardous to its insureds, enrollees or creditors, or to the public. Chapter 404 permits the Commissioner to take various actions against an insurer upon a finding or impairment or hazardous condition, including a requirement that the capital and surplus of an insurer be increased. Section 441.001(g) provides that for the reasons stated in §441.001, the substance and procedures relating to insurer delinquencies and insolvencies in Insurance Code Chapter 441 are the public policy of the State of Texas and are necessary to the public welfare. Section 441.001(a) states that insurer delinquencies destroy public confidence in the state's ability to regulate insurers and an insurer delinquency affects other insurers by creating a lack of public confidence in insurance and insurers. Section 441.001(b) states that placing an insurer in receivership often destroys or diminishes, or is likely to destroy or diminish, the value of the insurer's assets. Further, the purpose of Insurance Code §§441.051, 822.211, and 841.206 is to prohibit the impairment of a carrier's minimum required capital or surplus, and these statutes require that the Commissioner take action to remedy the impairment. Sections 441.051, 822.211, and 841.206 further provide that the failure of a carrier to maintain its required capital or surplus at levels required by the Commissioner by rule is considered a prohibited impairment.

The purpose of §7.402(g)(1), (2), (5), (6), and proposed new (7) is to protect the economic welfare of (i) carriers; (ii) consumers that purchase insurance policies, annuities and other contracts issued by property and casualty insurers, life insurance companies, health insurance companies, fraternal benefit societies, stipulated premium insurance companies, HMOs, and insurers filing the NAIC Health blank; (iii) other persons and entities that would be adversely affected by a carrier insolvency against the risk that a carrier may become insolvent and unable to pay its insureds' claims and other obligations as they become due; and (iv) the public and the state of Texas generally.

The requirements in §7.402(g) that carriers maintain capital and surplus at acceptable levels or prepare a comprehensive financial plan to restore their capital and surplus to acceptable levels are consistent with and necessary to implement the legislative intent of Chapters 404 and 441 and §§822.210, 841.205, 843.464, 884.206, 885.401, 982.105, and 982.106 of the Insurance Code. This intent is to ensure the financial solvency of a carrier, regardless of size, for the protection of the economic interests of all policyholders and not just the economic interests of those policyholders insured by large carriers.

Therefore, the Department has determined, in accordance with §2006.002(c-1) of the Government Code, that because the purpose of §7.402(g)(1), (2), (5), (6), and proposed new (7) and the authorizing statutes of the Insurance Code is to protect carrier and consumer economic interests and the state's economic welfare, there are no additional regulatory alternatives to the required comprehensive financial plans and increased capital required as a result of the risk-based capital requirements that will sufficiently protect the economic interests of carriers and consumers and the economic welfare of the state.

Sections 7.403 and 7.404.

Because of the similarity of their subject matter, proposed new §7.403 and §7.404 are discussed together in this section. As required by the Government Code §2006.002(c), the Department has determined that: (i) the costs to comply with §7.403 may have an adverse economic effect on zero to four small or micro-business carriers formed as county mutual insurance companies that meet the express criteria prescribed the Insurance Code §912.056(f) as amended by HB 2449; and (ii) the costs to comply with §7.404 may have an adverse economic effect on three to six small or micro-based carriers formed as stipulated premium insurance companies. These costs will be incurred by these relatively few small or micro-business carriers because of their failure to maintain capital/or surplus in accordance with the minimum levels required (i) the Insurance Code §912.056(f) and (g), in the case of certain county mutual insurance companies; and (ii) the Insurance Code §884.054(a) and (c) as well as SECTION 12 of HB 2570 in the case of stipulated premium insurance companies. This failure will trigger the requirement that the carrier increase its capital and/or surplus to the minimum levels required by (i) the Insurance Code §912.056(f) and (g) and the transition periods contained in proposed new §7.403 in the case of certain county mutual insurance companies; and (ii) the Insurance Code §884.054(a) and (c), as well as SECTION 12 of HB 2570 and the transition period contained in proposed new §7.404 in the case of certain stipulated premium insurance companies.

HB 2449 increased the minimum amount of unencumbered surplus, or guaranty fund and unencumbered surplus, that must be maintained by certain county mutual insurance companies that meet the express criteria contained in the Insurance Code §912.056(f), which includes that the carrier must cede 85 percent or more of its risks to one or more nonaffiliated reinsurers. These carriers are required to maintain unencumbered surplus, or guaranty fund and unencumbered surplus, equal to the greater of $2 million or five percent of the company's recoverable for reinsurance after taking credit against that recoverable for certain specified collateral that ensures the collection of the reinsurance. The Insurance Code §912.056(g) requires the Commissioner to adopt a rule that provides a transition period for these certain carriers to meet the requirements of §912.056(f), and for the pro rata elimination of any deficiencies in the amounts required by §912.056(f), which must be for a period of not less than five years.

HB 2570 increased the minimum amount of capital and surplus that must be maintained by stipulated premium insurance companies. These carriers are required to maintain minimum capital equal to $200,000 and minimum surplus equal to $75,000. SECTION 12 of HB 2570 requires a stipulated premium insurance company to increase its capital stock and surplus as required under Chapter 884 of the Insurance Code, as amended by HB 2570, not later than a date prescribed by rule by the Commissioner in connection with a reasonable schedule of intermediate increases to provide for a 10-year phase-in period.

The total cost of compliance with proposed new §7.403 and §7.404 that is necessary to comply with the Insurance Code §912.056(f), in the case of certain county mutual insurance companies, and the Insurance Code §884.054(a) and (c), in the case of certain stipulated premium insurance companies, is the capital and/or surplus that a small or micro-sized carrier

impacted by these proposed sections must raise in order to comply with these statutory requirements and the proposed new sections. The total costs for increasing capital and/or surplus will depend on a variety of factors, including (i) the size and type of the small or micro-business carrier; (ii) the amount of capital and/or surplus that must be raised; (iii) whether the capital and/or surplus may be obtained from internal sources, such as from the retention of profits; (iv) whether the capital and/or surplus must be obtained from external sources, such as from financial institutions or capital markets; and (v) the source and character of the underlying funds that are ultimately used to finance the capital and/or surplus. The function of the minimum surplus, or minimum capital and surplus, in §7.403 and §7.404 is to protect policyholders, enrollees, and carriers from the effects of carrier insolvency. To the extent any carrier must increase its capital and/or surplus as a result of the minimum surplus and/or minimum capital and surplus, that cost is a result of the statutory requirements in the Insurance Code Chapter §912.056(f) and (g), in the case of certain county mutual insurance companies, or §884.054(a) and (c), and SECTION 12 of HB 2570, in the case of stipulated premium insurance companies. These statutes increased the minimum level of unencumbered surplus and/or minimum capital and surplus and require and/or contemplate the commissioner to adopt rules in accordance with proposed new §7.403 and §7.404. Such costs of compliance are also a result of the statutory requirements in the Insurance Code Chapter 404 and §§441.001, 441.005, 441.051, 441.052, 822.210, 822.211, 884.206, and 912.056. These statutes authorize or require the Commissioner to order carriers that are operating in a potentially hazardous manner to take action to remedy such hazardous condition, which may include the requirement that the carriers increase their capital and surplus and take other remedial action. In accordance with the Government Code §2006.002(c-1), the Department has determined that even though §7.403 and §7.404 may have an adverse economic effect on small or micro-businesses that are required to comply with these proposed requirements, the Department is not required to prepare a regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis ". . . consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

Proposed new §7.403 and §7.404 are authorized by the Insurance Code Chapter §912.056(g), in the case of certain county mutual insurance companies, and SECTION 12 of HB 2570, in the case of stipulated premium insurance companies, which require and/or contemplate the Commissioner to adopt rules to provide a transition period for the new minimum surplus and/or minimum capital and surplus requirements. Proposed new §7.403 and §7.404 are also authorized by other Insurance Code statutes, including: Chapter 404 and §§441.051, 822.210, and 884.206. The purpose of these statutes is to require a carrier to maintain capital and/or surplus at levels commiserate with the amount of risk that they assume because of (i) the nature and kind of risks the carrier underwrites or reinsures; (ii) the premium volume of risks the carrier underwrites or reinsures; (iii) the composition, quality, duration, or liquidity of the carrier's investments; (iv) fluctuations in the market value of securities the carrier holds; or (v) the adequacy of the carrier's reserves. These statutes further require that a rule adopted by the Commissioner be designed to ensure the financial solvency of a carrier for the protection of policyholders, enrollees, creditors, or the general public from the harmful effects of carrier insolvency. Additionally, the primary purpose of Chapters 404 and 441 is to protect insureds, enrollees or creditors, and the public against an insurer or HMO becoming insolvent, delinquent, or in a condition that renders the continuance of its business hazardous to its insureds, enrollees or creditors, or to the public. Chapter 404 permits the Commissioner to take various actions against an insurer upon a finding or impairment or hazardous condition, including a requirement that the capital and surplus of an insurer be increased. Section 441.001(g) provides that for the reasons stated in §441.001, the substance and procedures in Insurance Code Chapter 441 are the public policy of the State of Texas and are necessary to the public welfare. Section 441.001(a) states that insurer delinquencies destroy public confidence in the state's ability to regulate insurers and an insurer delinquency affects other insurers by creating a lack of public confidence in insurance and insurers. Section 441.001(b) states that placing an insurer in receivership often destroys or diminishes, or is likely to destroy or diminish, the value of the insurer's assets. Further, the purpose of Insurance Code §§441.051, 822.211, and 841.206 is to prohibit the impairment of a carrier's minimum required capital or surplus, and these statutes require that the Commissioner take action to remedy the impairment. Sections 441.051, 822.211, and 841.206 further provide that the failure of a carrier to maintain its required capital or surplus at levels required by the Commissioner by rule is considered a prohibited impairment.

The purpose of §7.403 and §7.404 is to protect the economic welfare of (i) carriers; (ii) consumers that purchase insurance policies, annuities and other contracts issued by county mutual insurance companies and stipulated premium insurance companies; (iii) other persons and entities that would be adversely affected by a carrier insolvency against the risk that a carrier may become insolvent and unable to pay its insureds' claims and other obligations as they become due; and (iv) the public and the state of Texas generally.

The requirements in §7.403 and §7.404 that certain carriers maintain higher minimum amounts of capital and/or surplus is consistent with and necessary to implement the legislative intent of the Insurance Code §912.056(f) and (g), in the case of certain county mutual insurance companies, and §884.054(a) and (c) and SECTION 12 of HB 2570, in the case of stipulated premium insurance companies. The requirements in §7.403 and §7.404 are also consistent with the intent of the Insurance Code Chapter 404 and §§441.001, 441.005, 441.051, 441.052, 822.210, 884.206 and 912.056. This intent is to ensure the financial solvency of a carrier, regardless of size, for the protection of the economic interests of all policyholders and not just the economic interests of those policyholders insured by large carriers.

The Department further notes that the fundamental purpose of the proposed transition periods is to ease the impact to affected carriers by spreading the cost of compliance over a period of

several years. The transition period is five years pursuant to the Insurance Code §912.056(g) and proposed §7.403 for certain county mutual insurers. The transition period is 10 years pursuant to SECTION 12 of HB 2570, in the case of stipulated premium insurance companies. The Department further notes that county mutual insurance companies often write very substantial amounts of direct premiums which are supported by surplus amounts that may be more leveraged, which, in the view of the Department, warrants a relatively shorter transition period. The Department believes any adverse impact to small or micro sized carriers impacted by proposed §7.403 and §7.404 will be considerably lessened by these transition periods as compared to a requirement for immediate increases in the minimum capital and/or surplus amounts that must be maintained.

Therefore, the Department has determined, in accordance with §2006.002(c-1) of the Government Code, that because the purpose of §7.403 and §7.404 and the authorizing statutes of the Insurance Code is to protect carrier and consumer economic interests and the state's economic welfare, there are no additional regulatory alternatives to the required transition periods and increased capital required as a result of the minimum capital and/or minimum surplus requirements for certain county mutual insurance companies and stipulated premium insurance companies that will sufficiently protect the economic interests of carriers and consumers and the economic welfare of the state.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 8, 2010, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Danny Saenz, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The amendments and new sections are proposed under the Insurance Code Chapters 404 and 441 and §§822.210, 841.205, 884.054, 884.206, 843.404, 885.401, 912.056, 982.105, 982.106, and 36.001. Chapter 404 addresses the duties of the Department when an insurer's solvency is impaired. Section 404.004 provides that the Commissioner's authority to increase any capital and surplus requirements prevails over the general provisions of the Insurance Code relating to specific companies, and §404.005 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies and insolvencies. Under §441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Section 441.051 specifies "the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency" and includes certain statutorily specified conditions, including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 822.210 authorizes the Commissioner to adopt rules or guidelines to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 841.205 authorizes the Commissioner to adopt rules or guidelines to require an insurer that writes life or annuity contracts or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or a combination of these policies, in an amount that exceeds $10,000 to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 884.206 authorizes the Commissioner to adopt rules to require an insurer that writes or assumes life insurance, annuity contracts or accident and health insurance for a risk to one person in an amount that exceeds $10,000 to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 843.404 authorizes the Commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 884.054 specifies the capital stock and surplus requirements for stipulated premium insurance companies. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the Commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the Department to use the annual report in determining a society's financial solvency. Section 912.056 authorizes the Commissioner to adopt rules to provide a transition period for certain county mutual insurance companies to comply with the new surplus minimums required by the Insurance Code §912.056(f). Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal: Insurance Code Chapters 404 and 441 and §§404.003, 404.004, 404.005, 822.210, 841.205, 843.404, 884.054, 884.206, 982.105, 982.106 and 912.056.

§7.402. Risk-Based Capital and Surplus Requirements for Insurers and HMOs

(a) (No change.)

(b) Scope.

(1) Life companies. This section applies to any insurer authorized to do business in Texas as an insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that exceeds $10,000 including: capital stock companies, mutual life companies, and stipulated premium insurance companies [~~doing business in other states~~]. Fraternal benefit societies are subject to their own separate risk-based capital instructions as provided in subsection (d)(2) of

this section. [This section does not apply to stipulated premium companies only doing business in Texas.]

(2) Property and casualty companies. This section applies to all domestic, foreign, and alien property and casualty companies subject to the provisions of Insurance Code §822.210 and §982.106, including county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f), but excluding monoline financial guaranty insurers, monoline mortgage guaranty insurers, title insurers and those insurers subject to the Insurance Code §822.205 [that write business only in this state and are not required to have capital stock].

(3) (No change.)

(c) (No change.)

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following, which are available for inspection in the Financial Analysis Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas:

(1) The 2009 [2008] NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(2) The 2009 [2008] NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(3) The 2009 [2008] NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(4) The 2009 [2008] NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(5) The 2010 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(6) The 2010 NAIC Fraternal Benefit Societies Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(7) The 2010 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(8) The 2010 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(e) Filing requirements.

(1) All companies[, except fraternals,] subject to this section, except fraternal benefit societies, stipulated premium companies doing business only in Texas, and county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f), are required to file [both a paper copy and an] electronic versions of the 2009 and the 2010 RBC reports and any supplemental RBC forms and reports [version] with the NAIC in accordance with and by the due dates [date] specified in the RBC instructions.

(2) Fraternal benefit societies shall prepare, maintain, and file a paper copy of the 2009 RBC report and any supplemental RBC forms and reports with the department whenever requested by the department. Fraternal benefit societies [Fraternals] shall prepare and maintain a paper copy of the 2010 RBC report and any supplemental RBC forms and reports by March 1, 2011, and make the reports and forms available for review whenever requested by the department. The 2009 and 2010 RBC reports and any supplemental RBC forms and reports shall be completed in accordance with the respective calendar-year RBC instructions.

(3) Stipulated premium insurance companies only doing business in Texas are not required to file the 2009 RBC report, but shall file an electronic version of the 2010 RBC report and any supplemental RBC forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions.

(4) County mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) are not required to file the 2009 RBC report but shall file an electronic version of the 2010 RBC report and any supplemental RBC forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions.

(f) (No change.)

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital requires the following actions related to an insurer within the specified ranges:

(1) - (6) (No change.)

(7) A health insurer subject to this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent and triggers the trend test determined in accordance with the trend test calculation included in the Health RBC instructions. If the result of the trend test as determined by the formula is "YES", the insurer triggers regulatory attention at the company action level.

(h) - (j) (No change.)

§7.403. Transition Period for Certain County Mutual Insurance Companies.

(a) This section applies to a county mutual insurance company that cedes 85 percent or more of the company's direct and assumed risks to one or more nonaffiliated reinsurers and the company is otherwise required to comply with the Insurance Code §912.056(f).

(b) A county mutual insurance company shall comply with §7.402 of this subchapter (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs) unless the company meets the express criteria contained in the Insurance Code §912.056(f).

(c) A county mutual insurance company subject to the Insurance Code §912.056(f) that on December 31, 2009, had less than the minimum unencumbered surplus required by §912.056(f) must:

(1) not later than December 31, 2010, have increased the amount of its unencumbered surplus by at least 20 percent of the difference between the minimum amount required by §912.056(f) and the amount held by the company on December 31, 2009;

(2) not later than December 31, 2011, have increased the amount of its unencumbered surplus by at least 40 percent of the difference between the minimum amount required by §912.056(f) and the amount held by the company on December 31, 2009;

(3) not later than December 31, 2012, have increased the amount of its unencumbered surplus by at least 60 percent of the difference between the minimum amount required by §912.056(f) and the amount held by the company on December 31, 2009;

(4) not later than December 31, 2013, have increased the amount of its unencumbered surplus by at least 80 percent of the difference between the minimum amount required by §912.056(f) and the amount held by the company on December 31, 2009; and

(5) not later than December 31, 2014, have increased the amount of its unencumbered surplus by at least 100 percent of the difference between the minimum amount required by §912.056(f) and the amount held by the company on December 31, 2009.

§7.404. Transition Period for Stipulated Premium Insurance Companies.

(a) A stipulated premium insurance company shall comply with §7.402 of this subchapter (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs).

(b) A stipulated premium insurance company that on December 31, 2009, had less than the minimum amount of capital and surplus required for a newly incorporated company under the Insurance Code §884.054 must:

(1) not later than December 31, 2010, have increased the amount of its capital and surplus by at least 10 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under the Insurance Code §884.054(a) and (c) and the amount of the company's capital and surplus on December 31, 2009;

(2) not later than December 31, 2011, have increased the amount of its capital and surplus by at least 20 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054(a) and (c) and the amount of the company's capital and surplus on December 31, 2009;

(3) not later than December 31, 2012, have increased the amount of its capital and surplus by at least 30 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(4) not later than December 31, 2013, have increased the amount of its capital and surplus by at least 40 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(5) not later than December 31, 2014, have increased the amount of its capital and surplus by at least 50 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(6) not later than December 31, 2015, have increased the amount of its capital and surplus by at least 60 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(7) not later than December 31, 2016, have increased the amount of its capital and surplus by at least 70 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(8) not later than December 31, 2017, have increased the amount of its capital and surplus by at least 80 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(9) not later than December 31, 2018, have increased the amount of its capital and surplus by at least 90 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009; and

(10) not later than December 31, 2019, have at least the minimum amount of capital and surplus required under §884.054 for a newly incorporated company.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 27, 2010.

TRD-201005568
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 368. FLOOD MITIGATION ASSISTANCE PROGRAM

31 TAC §§368.1 - 368.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Water Development Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Water Development Board (Board) proposes the repeal of Chapter 368, §§368.1 - 368.11, regarding the Flood Mitigation Assistance Program.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL

The Board adopted Chapter 368 in 1998 to govern the Board's administration of grants under the Federal Emergency Management Agency's (FEMA) Flood Mitigation Program. At the time of adoption, the Board funded planning grants for flood mitigation from the Board's research and planning fund and cited the Board's requirement to adopt rules for administering the research and planning fund. The research and planning fund rules are currently at Chapter 355. Although Chapter 368 was adopted pursuant to the Board's authority under the research and planning fund, it was amended several times to ensure consistency with FEMA's Flood Mitigation Program.

In 2007, the Legislature named the Board as the primary state agency for all National Flood Insurance programs in Texas. FEMA establishes the process and the procedures for the awards of grants for flood mitigation plans. Applications for flood mitigation assistance submitted to the Board must comply with FEMA regulations at 44 CFR Parts 78 and 79. The

National Flood Insurance Act's programs administered by the Board, including the flood mitigation assistance program, are administered pursuant to FEMA regulations and guidance. Local entities applying for flood mitigation grants are required to comply with FEMA regulations and guidance. FEMA reviews all applications for assistance that are recommended by the Board, but FEMA makes the final decisions. In light of the 2007 assumption of more FEMA flood programs, the Board's role is now more multi-faceted than when Chapter 368 was first adopted by the Board. The Board has been operating under the federal rules for the grant programs without its own rules and believes it is more efficient and less confusing for the public and for eligible entities to follow federal rules rather than state rules that reiterate the federal requirements.

Pursuant to Texas Water Code §16.318, the Board is not required to adopt rules relating to the FEMA flood insurance programs currently in place in Texas. Therefore, the Board proposes the repeal of Chapter 368 to avoid duplicating federal requirements at 44 CFR Parts 78 and 79.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Melanie Callahan, Deputy Executive Administrator, has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeal.

PUBLIC BENEFITS AND COSTS

Ms. Callahan also has determined that for each year of the first five years the proposed repeal is in effect, the public will benefit from the repeal because it will clarify and enhance the efficiency of the Board's operations and will impose no new requirements on the public or persons required to comply with the repeal as proposed.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Board has determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect because it will impose no new requirements on local economies.

The Board has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this repeal. The Board has also determined that there is no anticipated economic cost to persons who are required to comply with the repeal as proposed. Therefore, no regulatory flexibility analysis is necessary.

REGULATORY IMPACT ANALYSIS

The Board has determined that the proposed repeal is not subject to Texas Government Code §2001.0225 because it is not a major environmental rule under that section.

TAKINGS IMPACT ASSESSMENT

The Board has determined that the proposed repeal will constitute neither a statutory nor a constitutional taking of private real property. The proposed repeal does not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because the proposed repeal does not burden nor restrict or limit the owner's right to property. Therefore, the proposed repeal does not constitute a taking under Texas Government Code, Chapter 2007.

SUBMITTAL OF COMMENTS

Comments on the proposed repeal will be accepted for 30 days following publication and may be submitted to Legal Services, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, *rulescomments@twdb.state.tx.us,* or by fax at (512) 463-5580.

STATUTORY AUTHORITY

The repeal is proposed under the authority of Texas Water Code §6.101, which authorizes the Board to adopt rules necessary to carry out the powers and duties of the Board; and Texas Water Code §16.318 which allows, but does not require, the Board to adopt rules for the National Flood Insurance Program.

Cross reference to statute: Texas Water Code, Chapter 16, Subchapter I, §§16.311 - 16.324.

§368.1. Definitions.

§368.2. General.

§368.3. Purpose.

§368.4. Grant Applications and Notice.

§368.5. Eligibility Criteria.

§368.6. The Flood Mitigation Plan.

§368.7. Types of Projects Eligible for Funding Through FMA.

§368.8. Planning Grant Evaluation and Approval Process.

§368.9. Project Grant Evaluation and Approval Process.

§368.10. Funding Limitations.

§368.11. Contracts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005558
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 463-8061

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.333

The Comptroller of Public Accounts proposes an amendment to §3.333, concerning security services. This rule is being amended to correct the inclusion of services licensed under

Occupations Code, §1702.1025, relating to electronic access control devices, within the definition of security services.

Subsection (a) is amended to correct the inclusion of services licensed under Occupations Code, §1702.1025, relating to electronic access control devices, within the definition of security services. Subsection (k) is amended to add certain persons who install electronic access control devices, as that term is defined in Occupations Code, §1702.002(a)(6-a) in existing nonresidential improvements to real property, to the list of persons providing a service that is not taxable as a security service but may be taxable under another provision of the tax code. Subsections (b) and (h) are amended for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in clarifying under which provision the service of installing certain electronic access control devices is taxable. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Occupations Code, §1702.1025 and clarifies the application of §151.0075.

§3.333. Security Services.

(a) What a security service is. Security service means any service for which a license is required under Occupations Code, §1702.101 or §1702.102 [~~§§1702.101, 1702.102, or 1702.1025~~], Private Security Chapter [~~Act~~], and includes any service provided within the scope of the required license as an investigations company, guard company, alarm systems company, armored car company, courier company, guard dog company, security services contractor, private security officer, detective service, private investigator, [~~electronic access control device company,~~] locksmith company, or private security consultant company.

(b) Permit required [~~Hold permits~~]. A provider of security services must obtain a Texas sales and use tax permit and collect tax on the total amount charged for security services, or accept a properly completed resale or exemption certificate in lieu of collecting tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale (Tax Code, §§151.006, 151.054, 151.151, 151.152, 151.153, 151.154, 151.302, 151.707)) and §3.287 of this title (relating to Exemption Certificates).

(c) Employees. Security services performed by an employee for his employer in the regular course of business, within the scope of the employee's duties, and for which the employee is paid his regular wages or salary are not taxable.

(d) Temporary security service personnel. A security service is taxable even when provided on a temporary basis unless:

(1) the security service is performed by a temporary help service for an employer to supplement the employer's existing security service personnel on a temporary basis;

(2) the security service is normally performed by the employer's own employees;

(3) the employer provides all supplies and equipment necessary; and

(4) the temporary employee is under the direct or general supervision of the employer to whom the security service is furnished.

(e) Security services provided in Texas. Charges for providing security service to property or persons located in Texas are subject to Texas sales tax. Unless a customer claims multistate benefit as provided in subsection (p) of this section, if any portion of the security service originates in Texas, Texas sales tax is due even though a portion of the service may be performed in another state. Credit will not be allowed against Texas sales tax for use tax imposed by another state when the service benefit location is in Texas. Detective and investigation services of corporate locations or premises located outside Texas are not taxable if the investigation is unrelated to any investigation of corporate locations in Texas.

(f) Credit for security services originating in another state. If a security service originates in another state and sales tax is legally paid on that service in the other state, credit against the Texas use tax will be allowed. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(g) Resale certificates.

(1) A seller of a security service may issue a resale certificate in lieu of tax to a supplier of tangible personal property only if care, custody, and control of the property will be transferred to the service provider's client. For example, a security service provider purchases a DVD to transfer the results of an investigation to a customer. The DVD is transferred to the customer, and the customer owns and uses the DVD to review the results of the security service. The security service provider may purchase the DVD tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the DVD and for the services.

(2) A resale certificate may be issued for a taxable service if the buyer intends to transfer the service as an integral part of a taxable service. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property that will be resold. If the entire service is not incorporated into the tangible personal property, it will be presumed the service is subject to tax and the service will be exempt only to the extent the buyer can establish the portion of the service actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(h) Sales price, unrelated [~~Unrelated~~] services.

(1) Providers of taxable security services must collect state and all applicable local sales tax on the total sales price of the services provided unless they receive a properly completed resale or exemption certificate from the purchaser. [~~A service will be considered unrelated if:~~]

[(A) it is not a security service, nor a service taxable under other provisions of Tax Code, Chapter 151;]

[(B) it is of a type that is commonly provided on a stand-alone basis; and]

[(C) the performance of the unrelated service is distinct and identifiable. Examples of unrelated services that may be excluded from the tax base include a service for which no license is required, such as coin-wrapping services by a courier or armored car service, or providing court testimony, training, or filing legal documents.]

(2) The total sales price includes charges for services or expenses directly related to and incurred while providing a taxable security service, even if billed separately. Examples include charges for meals, telephone calls, hotel rooms, or airplane tickets.

(3) [(2)] Where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The service provider may overcome the presumption by separately stating to the customer at the time the transaction occurs a reasonable charge for the taxable services. However, if the charge for the taxable portion of the services is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to nontaxable unrelated services. The service provider's books must support the apportionment between taxable and nontaxable activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for nontaxable services is unreasonable when the overall transaction is reviewed, the comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

(4) [(3)] Charges for services or expenses directly related to and incurred while providing a taxable service are taxable and may not be separated for the purpose of excluding those charges from the tax base. Examples include charges for meals, telephone calls, hotel rooms, or airplane tickets.

(5) A service will be considered unrelated, and thus not part of the sales price of a taxable security service, if:

(A) it is not a security service, nor a service taxable under other provisions of Tax Code, §151;

(B) it is of a type that is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of unrelated services that may be excluded from the tax base include a service for which no license is required, such as coin-wrapping services by a courier or armored car service, or providing court testimony, training, or filing legal documents.

(i) Excepted persons. Persons excepted from the licensing requirements of the Private Security Act, are not providing security services subject to the sales tax because they are not required to hold a license to provide their services. Examples include, but are not limited to:

(1) persons employed exclusively and regularly by one employer in connection with the affairs of the employer;

(2) officers or employees of the United States, this state, or a political subdivision of either, while engaged in the performance of official duties;

(3) persons who have full-time employment as peace officers as defined by Code of Criminal Procedure, Article 2.12, and who receive compensation for private employment on an individual or an independent contractor basis as patrolmen, guards, or watchmen;

(4) persons who provide telematics services (a service that may rely on global positioning system satellite data to fix the exact location of a vehicle) as defined in Occupations Code, §1702.332(a), and who have satisfied exemption requirements as set out in Occupations Code, §1702.332(c);

(5) persons who sell burglar alarm or other protective devices exclusively over-the-counter, by mail order or by e-commerce;

(6) persons who sell or install automobile burglar alarm devices;

(7) persons set out in Occupations Code, §1702.331(b), who provide personal emergency response systems as defined in Occupations Code, §1702.331(a), that are not part of a combination of alarm systems that include burglar alarm or fire alarm; and

(8) a person or firm licensed as an accountant or accounting firm under Occupations Code, Chapter 901, an owner of an accounting firm, or an employee of an accountant or accounting firm.

(j) A charge for using a slim-jim or similar device to open a locked vehicle, is not taxable, even when the service provider is a licensed locksmith.

(k) Taxable under other provisions. Persons whose activities are not defined as security services may nonetheless be performing a service that is taxable under other provisions. Examples include, but are not limited to:

(1) persons engaged in the business of obtaining and furnishing credit information. See §3.343 of this title (relating to Credit Reporting Services);

(2) insurance adjusters, insurance investigators, and/or claims processors performing services in connection with a policy of insurance. Although not taxable as security services, some insurance services are subject to sales and use tax. See §3.355 of this title (relating to Insurance Services).

(3) persons who install electronic access control devices, as that term is defined in Occupations Code, §1702.002(a)(6-a) in existing nonresidential improvements to real property. Although not taxable as a security service, the installation of such a device in an existing nonresidential real property improvement may be taxable as nonresidential real property repair, remodeling or restoration. See §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance. (Tax Code, §§151.0047, 151.0101, 151.056, 151.058, 151.311, 151.350, 151.429)).

(l) Undercover agents. The fact that a security service provider may be performing his services by furnishing an undercover agent will not affect the applicability of sales tax to the service transaction between the employer and the consumer. The employer of the undercover agent is considered to be providing security services to a client, and that transaction is subject to the sales tax.

(m) Local taxes. Local sales and use taxes (city, county, transit authority, and special purpose district) apply to services in the same way as they apply to tangible personal property. A service provider must collect local sales taxes if the service provider's place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. If the place of business is outside such a jurisdiction but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is responsible for collecting them. For information on the collection and reporting responsibilities of providers and purchasers of

taxable services, see §3.374 of this title (relating to Collection and Allocation of the City Sales Tax) and §3.375 of this title (relating to City Use Tax).

(n) Use tax. If a seller of a service is not engaged in business in Texas or in a specific local taxing jurisdiction and is not required to collect Texas state or local tax, it is the Texas customer's responsibility to report the use tax directly to this office.

(o) Service benefit location. If the security service provider is in Texas and the customer is located only in Texas, Texas tax is due, and must be collected by the security service provider.

(p) Service benefit location--multistate customer.

(1) To the extent a security service is provided for a separate, identifiable segment of a customer's business, the service is presumed to benefit the location where that part of the customer's business is conducted.

(2) To the extent the use of the service cannot be assigned to an identifiable segment of a customer's business, the service is presumed to be used to support the administration or operation of the customer's business generally. The security service is presumed to be used at the customer's principal place of business. The principal place of business means the place from which the trade or business is directed or managed.

(3) If a multistate customer claims that part of the security service benefits the customer's business at locations both within and outside the state, the customer must provide the security service provider with an exemption certificate in lieu of tax. It will then be the customer's responsibility to report the tax to this office for that portion of the security service that benefits Texas locations. The security service will not be taxable to the extent the customer can establish benefit outside Texas. A multistate customer may use any reasonable method for allocation that is supported by business records.

(4) A security service provider who accepts an exemption certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005517
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 936-6472

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER W. NEGOTIATED RULEMAKING POLICY

37 TAC §§1.281 - 1.284

The Texas Department of Public Safety (the department) proposes new §§1.281 - 1.284, concerning Negotiated Rulemaking Policy. These new rules are necessary to implement a negotiated rulemaking procedure for the adoption of department rules as required by Texas Government Code, §411.0044.

Cheryl MacBride, Assistant Director of Finance, has determined that for each year of the first five-year period the new rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. MacBride has determined that for each year of the first five-year period the new rules are in effect the public benefit anticipated as a result of enforcing the new rules will be publication of the negotiated rulemaking procedure and current and updated rules.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the new rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the new rules as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these new rules. Accordingly, the department is not required to complete a takings impact assessment regarding these new rules.

Comments on this proposal may be submitted to Susan Estringel, Office of General Counsel, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773; susan.estringel@txdps.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.0044 which authorizes commission to implement a policy to encourage the use of negotiated rulemaking procedures under Texas Government Code, Chapter 2008 for the adoption of department rules.

Texas Government Code, §411.004(3) and §411.004 are affected by this proposal.

§1.281. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context shall clearly indicate otherwise.

(1) Act--The Negotiated Rulemaking Act, Texas Government Code, Chapter 2008.

(2) Commission--The Public Safety Commission.

(3) Department--The Texas Department of Public Safety.

§1.282. Statement of Policy.

(a) It is the policy of the commission and the department to encourage public participation in the rulemaking process when appropriate. When the commission finds that rules to be drafted are likely to be complex, or controversial, or to affect disparate groups, public participation through negotiated rulemaking may be proposed.

(b) If the commission determines that negotiated rulemaking is appropriate, the commission may elect to develop a draft rule either through an informal negotiated rulemaking process or through a formal negotiated rulemaking process.

(c) The commission may consider engaging in formal negotiated rulemaking when it is likely that a negotiated rulemaking committee will reach a consensus on a draft rule in a timely manner. The commission will also consider the factors specified in the Act, when deciding whether to pursue formal negotiated rulemaking.

(d) If the commission determines that formal negotiated rulemaking is not feasible or appropriate, but the commission determines that public participation would be valuable, the commission may engage in informal negotiated rulemaking procedures.

§1.283. Procedures.

(a) Formal negotiated rulemaking procedures. When the commission proposes to engage in formal negotiated rulemaking, the commission and the department shall follow the negotiated rulemaking process and procedures described in the Act.

(b) Informal negotiated rulemaking procedures. When the commission proposes to engage in informal negotiated rulemaking, the commission may identify persons likely to be affected or interested and invite them to participate in an informal and advisory public process for the development of a draft rule. Types of informal negotiated rulemaking processes that may be utilized on an advisory basis may include:

(1) appointing working groups;

(2) appointing advisory committees; or

(3) holding public meetings.

§1.284. Designation of Trained Person.

As provided by Texas Government Code, §411.0044, the commission shall periodically designate a trained person who will:

(1) coordinate the implementation of the commission's negotiated rulemaking policy;

(2) serve as a resource for any training needed to implement procedures for negotiated rulemaking; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission and the department.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2010.

TRD-201005458
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 424-5848

♦ ♦ ♦

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER C. COMMERCIAL VEHICLE REGISTRATION AND INSPECTION ENFORCEMENT

37 TAC §4.37

The Texas Department of Public Safety (the department) proposes an amendment to §4.37, concerning Acceptance of Out-of-State Commercial Vehicle Inspection Certificate.

An amendment to §4.37 is necessary to incorporate language added to Texas Transportation Code, §548.005(3) as a result of HB 2730, 81st Legislature, 2009 relating to the exceptions of inspections only by state-certified and supervised inspection stations which became effective September 1, 2009. Section 548.005(3), and subsequently this amendment, authorizes the acceptance in this state of a certificate of inspection and approval issued in compliance with 49 C.F.R. Part 396 to a motor bus, as defined by §502.001, that is registered in this state but is not domiciled in this state.

Cheryl MacBride, Assistant Director of Finance, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. MacBride has determined that for each year of the first five-year period the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendment as proposed. There is no anticipated economic cost to individuals who are required to comply with the amendment as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this amendment. Accordingly, the department is not required to complete a takings impact assessment regarding this amendment.

Comments on this proposal may be submitted to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the compulsory inspection of vehicles.

Texas Government Code, §411.004(3) and Texas Transportation Code, §548.002 are affected by this proposal.

§4.37. Acceptance of Out-of-State Commercial Vehicle Inspection Certificate.

(a) Texas-registered commercial vehicles. Acceptance of commercial vehicle inspection certificates issued outside of Texas. A valid commercial vehicle inspection certificate issued in a jurisdiction having an inspection program that has been certified by the Federal Motor Carrier Safety Administration under the provisions of Title 49, Code of Federal Regulations, §396.23(b)(1) as meeting the requirements of §396.17 is acceptable on a Texas-registered commercial vehicle.

(b) Out-of-state registered commercial vehicles. Commercial vehicles required to be registered in Texas will be required to be inspected at an official commercial vehicle inspection station and obtain a vehicle identification certificate, Form VI-30-A, before the registration process can be completed. Valid out-of-state inspection certificates will not be honored on commercial vehicles required to be registered.

(c) Exceptions of inspections only by state-certified and supervised inspection stations. Acceptance in this state of a certificate of inspection and approval issued in compliance with 49 C.F.R. Part 396 to a motor bus, as defined by §502.001, that is registered in this state but is not domiciled in this state.

(d) [~~(c)~~] Jurisdictions certified under the provisions of Title 49, Code of Federal Regulations, §396.23(b)(1). The following jurisdictions have been certified by the Federal Motor Carrier Safety Administration as meeting the requirements of Title 49, Code of Federal Regulations, §396.23(b)(1): Alabama (LPG Board), California, Connecticut (Bus Inspection Program), District of Columbia, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio (Bus Inspection Program), Pennsylvania, Rhode Island, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin (Bus Inspection Program), or any of the ten Canadian Provinces and the Yukon Territory.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2010.

TRD-201005455

Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 424-5848

♦ ♦ ♦

CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

SUBCHAPTER C. SCHOOL BUS DRIVER SAFETY TRAINING PROGRAM

37 TAC §§14.32, 14.33, 14.36

The Texas Department of Public Safety (the department) proposes amendments to §§14.32, 14.33, and 14.36, concerning School Bus Driver Safety Training Program. The proposed amendments update the rules to reflect certification curriculum updates.

Cheryl MacBride, Assistant Director of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride has determined that for each year of the first five-year period the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be current and updated rules.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments as proposed. There are no anticipated economic costs to individuals who are required to comply with the amendments as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Government Code does not apply to these amendments. Accordingly, the department is not required to complete a takings impact assessment regarding these amendments.

Comments on the proposal may be submitted to Rebecca Rocha, School Bus Transportation Program, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0525, (512) 424-7395. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.022, which authorizes the department to adopt rules to administer and enforce the school bus driver safety training program.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.022 are affected by this proposal.

§14.32. School Bus Driver Safety Training Program.

The school bus driver safety training program shall be provided in accordance with the following requirements:

(1) the school bus driver safety training program shall be administered by the approved training agency;

(2) the department shall have primary responsibility for program content, monitoring, and regulation; and for providing technical assistance to the training agency;

(3) program standards for providing school bus driver safety training shall include the following:

(A) the initial certification safety training course, Texas School Bus Driver Certification Course [~~Guide for School Bus Driver Training in Texas~~], shall consist of a minimum of twenty clock-hours of instruction;

(B) the recertification safety training course, Texas School Bus Driver [~~Safety Training~~] Recertification Course, shall consist of a minimum of eight clock-hours of instruction;

(C) individual class sessions shall be limited in duration to a maximum of four hours of instruction on a workday and eight hours of instruction on a non-workday. Rest breaks of no more than ten minutes are permitted between each consecutive hour of instruction;

(D) enrollment for individual classes shall be limited to a maximum of 35 trainees per certified instructor. A minimum of one certified instructor shall be in attendance during any class session;

(E) when scheduling and registering for classes, priority shall be given to those persons holding an enrollment certificate;

(F) reasonable accommodations may be requested for persons with certain disabilities who attend training classes and need auxiliary aids or services, such as an interpreter for the deaf or hearing impaired. Such requests should be directed to the appropriate training agency at least seven business days prior to the start of course instruction so that appropriate arrangements can be made;

(G) each trainee shall be given the opportunity to complete a course evaluation report at the end of each session; and

(H) any modifications to the program standards for the School Bus Driver Safety Training Program shall not be implemented by the training agency without prior approval of the department.

§14.33. School Bus Driver Safety Training Program Curriculum.

(a) The curriculum for the school bus driver safety training program will be developed by the department and approved by the director, or designee.

(b) The certification course shall include instruction in each of the four sessions [~~ten units~~] comprising the current Texas School Bus Driver Certification Course [~~Guide for School Bus Driver Training in Texas~~] as developed by Texas Transportation Institute (TTI) [~~Southwest Texas Quality Institute (SWTQI)~~] and approved by the department. At least four hours of each course shall be devoted to relevant and appropriate laboratory activities.[~~, and each unit shall be taught in accordance with the following class time allocations:~~]

[~~(1) Introduction--1 hour;~~]

[~~(2) Student Management--2.0 hours;~~]

[~~(3) Know Your Bus--2.0 hours;~~]

[~~(4) Traffic Regulations--1.5 hours;~~]

[~~(5) Responsible Driving--4.0 hours;~~]

[~~(6) Emergency Evacuation--2.0 hours;~~]

[~~(7) First Aid--1.5 hours;~~]

[~~(8) Procedures for Loading and Unloading Students--2.5 hours;~~]

[~~(9) Special Needs Transportation--1.5 hours;~~]

[~~(10) Awareness of the Effects of Alcohol and Other Drugs--1.5 hours;~~]

[~~(11) Summary and Written Test--0.5 hours.~~]

(c) The recertification course shall include instruction in each of the eight modules comprising the current Texas School Bus Driver Certification Course as [~~safety training material~~] developed by Texas Transportation Institute (TTI) [~~Texas Engineering Extension Service Transportation Training Division of the Texas AM University System, (TEEX)~~] and approved by the department [~~or Units II, IV, V, VIII, and X of the current Course Guide for School Bus Driver Training in Texas. If teaching Units II, IV, V, VIII, and X, at least one hour of instruction must be allocated to each of these five units, with any remaining or additional time devoted to other relevant and appropriate topics or activities~~].

[~~(d) A test regarding course content will be administered to each trainee. A minimum score of 80% open book shall be required for satisfactory completion of both the twenty-hour certification course and the eight-hour recertification course.~~]

(d) [~~(e)~~] Any modifications to the School Bus Driver Safety Training Program curriculum shall not be implemented by the training agency without prior approval of the department.

§14.36. Enrollment Certificate.

(a) A training agency may grant a qualified applicant temporary and provisional certification status in the form of an "Enrollment Certificate" upon receipt of a completed application from the requesting employer stating that this person has fulfilled all of the following eligibility requirements:

(1) at least 18 years of age;

(2) possess a valid driver's license designating a class appropriate (with applicable endorsements, if commercial driver license) for the gross vehicle weight rating and manufacturer's designed passenger capacity of motor vehicle to be operated;

(3) an acceptable driving record determined in accordance with §14.14 of this title (relating to Minimum Driving Record Qualifications);

(4) an acceptable criminal history record, secured from any law enforcement agency or criminal justice agency, and reviewed in accordance with the provisions of current state statute (see Chapter 22 of the Texas Education Code);

(5) meets the medical qualifications as specified in §14.12 of this title (relating to Medical Qualifications) and any pre-employment testing in accordance with current federal law; and

(6) each employer must ensure that all school bus drivers have an acceptable level of knowledge and skill regarding the safe operation of school buses, school activity buses, and/or multifunction school activity buses. It is the employer's inherent responsibility to ensure that the driver understands the contents [~~of Units II, IV, V, VIII and X~~] of the current Texas School Bus Driver Certification Course [~~Guide for School Bus Driver Training in Texas~~].

Figure: 37 TAC §14.36(a)(6) (No change.)

(b) In addition to the prerequisites listed in subsection (a) of this section, the following rules shall apply to the issuance of all enrollment certificates:

(1) recipients must register for the first available twenty-hour certification course as determined by the training agency. Except as approved by the training agency, failure to satisfactorily complete the school bus driver certification course as scheduled shall result in revocation of the enrollment certificate;

(2) enrollment certificates shall be dated to expire no later than 180 days past the date issued. Except as approved by the training agency, a minimum of five years must elapse between the issuance of consecutive enrollment certificates;

(3) an enrollment certificate shall be similar to the standard school bus driver safety training certificate and contain the words, "Enrollment Certificate" either stamped or printed diagonally across the face of the training certificate; and

(4) the training agency shall submit to the department the necessary verification information electronically for all enrollment certifications within thirty days of issuance.

Figure: 37 TAC §14.36(b)(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2010.

TRD-201005456
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 424-5848

♦ ♦ ♦

SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

37 TAC §14.52, §14.54

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 37 TAC §14.52 is not included in the print version of the Texas Register. The figure is available in the on-line version of the October 8, 2010, issue of the Texas Register.)

The Texas Department of Public Safety (the department) proposes amendments to §14.52 and §14.54, concerning School Bus Safety Standards. The amendments update the rules to reflect the 2011 Texas School Bus Specifications as the current publication and relieve the mandatory school bus emergency evacuation training as passed by the 81st Texas Legislature.

Cheryl MacBride, Assistant Director of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride has determined that for each year of the first five-year period the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be current and updated rules.

Ms. MacBride has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments as proposed. There are no anticipated economic costs to individuals who are required to comply with the amendments as proposed. There is no anticipated negative impact on local employment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these amendments. Accordingly, the department is not required to complete a takings impact assessment regarding these amendments.

Comments on the proposal may be submitted to Rebecca Rocha, School Bus Transportation Program, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0525, (512) 424-7395. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §34.002, which authorizes the department to establish safety standards for school buses used to transport students in accordance with Texas Education Code §34.003; Texas Transportation Code, §547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and Texas Transportation Code, §547.7015, which authorizes the department to adopt and enforce rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of school children.

Texas Government Code, §411.004(3); Texas Education Code, §34.002; and Texas Transportation Code, §547.102 and §547.7015 are affected by this proposal.

§14.52. Texas School Bus Specifications.

(a) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all school buses offered for sale to or use by the public school systems in Texas meet or exceed all standards, specifications, and requirements as specified in the department's publication Texas School Bus Specifications. The department hereby adopts the Texas School Bus Specifications for 2011 [~~2010~~] Model School Buses. Previously published Texas School Bus Specifications remain in effect for earlier model year school buses until the department repeals these publications.

Figure: 37 TAC §14.52(a)
[~~Figure: 37 TAC §14.52(a)~~]

(b) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all multifunction school activity buses offered for sale to or use by the public school systems in Texas meet or exceed all federal standards, specifications, and requirements of a multifunction school activity bus as specified in the Title 49, Code of Federal Regulations, Part 571.

(1) A multifunction school activity bus may be painted any color except National School Bus Glossy Yellow.

(2) A multifunction school activity bus cannot be used for home to school or school to home transportation. Before delivery of a multifunction school activity bus, the manufacturer must place a label in the direct line of site of the driver while seated in the driver's seat stating: "This vehicle is not to be used for home to school or school to home transportation."

(c) Any new school bus found out of compliance with the specifications that were in effect in Texas on the date the vehicle was manufactured will be placed out of service by the vehicle's owner until it is brought into compliance with the applicable specifications.

§14.54. School Bus Emergency Evacuation Training.

(a) School districts and charter schools will be responsible for developing the school bus emergency evacuation training curriculum based on the most recent edition of the National School Transportation Specifications and Procedures, as adopted by the National Congress on School Transportation, or a similar school transportation safety manual.

(b) For purposes of conducting school bus emergency evacuation training, [~~the term "spring" shall be defined as January 1 to June 30 and~~] the term "fall" shall be defined as July 1 to December 31.

(c) School districts and charter schools are encouraged to [~~should~~] make a good faith effort to ensure that all students, teachers, and appropriate staff receive the [~~required~~] school bus emergency evacuation training at least once [~~twice~~] each school year. [~~School districts and charter schools shall prepare and maintain a record of each student and teacher that did not receive the required training as well as the reason(s) that the individual was not able to attend the training.~~]

(d) Reporting Requirements.

(1) A record of each school bus emergency evacuation training session conducted must be submitted on a form prescribed by the department that is available at the following internet [~~Internet~~] web site address: http://www.txdps.state.tx.us/forms. All information requested on the form must be completed. The completed form must be mailed to School Bus Transportation, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0525 or submitted via electronic mail to sbt@txdps.state.tx.us.

(2) Reports must be submitted not later than the 30th day after the date each training session is completed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2010.

TRD-201005457
Duncan R. Fox
Interim General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 424-5848

♦ ♦ ♦

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.28, Responsibility of a Law Enforcement Agency to Report an Arrest of a Peace Officer or County Jailer. Peace Officer and County Jailer are removed from the title and replaced by licensee to be consistent with other rules. Subsection (a) is amended to replace peace officer or county jailer with licensee to be consistent with other rules. Subsection (b) is amended to reflect the effective date of the changes.

These amendments are necessary to incorporate the changes to Texas Occupations Code §1701.3075 from House Bill 2799.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying that both appointed license holders and those qualified to be appointed must be reported when arrested to ensure that administrative action is taken to prevent unauthorized personnel from working.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.3075, Qualified Applicant Awaiting Appointment.

No other code, article, or statute is affected by this proposal.

§211.28. Responsibility of a Law Enforcement Agency to Report an Arrest of a Licensee [~~Peace Officer or County Jailer~~].

(a) When an individual that is required to report under §211.27 of this title [~~a peace officer or county jailer~~] is arrested for a criminal offense above the grade of Class C misdemeanor or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, the chief administrator of an arresting agency or their designee must report such fact to the commission in writing within 30 business days of the arrest, including:

(1) the name, date of birth and Personal Identification Number (PID) (if available)[~~, or social security number of the licensee (if available)~~];

(2) the name, address, and telephone number of the arresting agency;

(3) the date and nature of the arrest;

(4) the arresting agency incident, booking, or arrest number; and

(5) the name, address, and telephone number of the court in which such charges are filed or such arrest is filed.

(b) The effective date of this section is February 24, 2011. [~~March 1, 2008.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005501
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.20

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.20, Retired Peace Officer Reactivation. Subsection (c) is amended to require retired peace officers to meet the current licensing standards. Subsection (d) is amended to reflect the effective date of the changes.

These amendments are necessary to ensure that everyone attempting licensure must meet the same requirements.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that anyone licensed as a peace officer will meet the same standards.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.316, Reactivation of Peace Officer License.

No other code, article, or statute is affected by this proposal.

§217.20. Retired Peace Officer Reactivation.

(a) A retired peace officer license becomes inactive when the licensee has not been reported to the commission as appointed for more than two years and the continuing education requirements have not been met.

(b) The holder of an inactive license is unlicensed for purposes of these sections and the Texas Occupations Code, Chapter 1701.

(c) In order for a retired peace officer to reactivate a license, a retiree must meet the current licensing standards and the reactivation requirements of Texas Occupations Code §1701.3161.

[~~(c) In order for a retired peace officer to reactivate a license, a retiree must meet the reactivation requirements of Texas Occupations Code §1701.3161.~~]

(d) The effective date of this section is February 24, 2011. [~~April 15, 2010.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005503
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS

37 TAC §219.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §219.1, Eligibility to Take State Examinations. Subsection (d) is amended to require individuals that were previously licensed to meet the current licensing standards. Subsection (k) is amended to reflect the effective date of the changes.

These amendments are necessary to ensure that everyone attempting licensure must meet the same requirements.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that anyone licensed as a peace officer will meet the same standards.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.304, Examination.

No other code, article, or statute is affected by this proposal.

§219.1. Eligibility to Take State Examinations.

(a) To be eligible to take a state licensing examination, an individual must have a valid endorsement.

(b) A valid endorsement is based on:

(1) a previously completed commission approved basic licensing course;

(2) an expired commission licensing examination result, over two years old;

(3) reactivating a Texas license under rule §217.19;

(4) out of state training, licensing, or certification the commission accepts as a peace officer, federal or military training; or

(5) county corrections training accepted from Texas Occupations Code Chapter §1701.310.

(c) A valid endorsement shall:

(1) be in the approved commission format,

(2) be a completed original document bearing all required signatures,

(3) state that the examinee has met the current minimum training standards appropriate to the license sought, and

(4) include a date of issue and an expiration date.

(d) For an endorsement to be or remain valid:

(1) it must not be issued in error or based on false or incorrect information; specifically, the applicant must meet the current enrollment standards; or if previously licensed, meet the current licensing standards; [~~have met the enrollment standards at initial licensure;~~] and

(2) it must be presented before its expiration date.

(e) An endorsement to take an examination is issued by a training coordinator, the registrar of a licensed academic alternative provider, the executive director of the commission, or a person authorized by the executive director. Duplicate endorsements may only be issued by the executive director of the commission.

(f) In order to issue the endorsement, the person issuing such an endorsement, other than a commission employee, must have on file for the person to whom it is issued, written documentation of successful completion of the basic licensing course for the license sought; and

(1) written documentation that the person to whom it is issued was previously licensed by the commission, or

(2) if the person is not currently licensed by the commission, written documentation that the applicant meets the current enrollment standards.

(g) In order to receive an endorsement from the commission, individuals must meet all current requirements, to include submitting any required application currently prescribed by the commission, requested documentation, and any required fee.

(h) An examination may not be taken by an individual who already holds an active license or certificate to be awarded upon passing that examination.

(i) Once an endorsement is issued, an examinee will be allowed three opportunities to pass the examination while the examinee's endorsement remains valid. After three failures, the examinee must re-qualify by repeating the basic licensing course for the license sought. If an attempt is invalidated for any reason, except for a commission error, that attempt will count as one of the three opportunities.

(j) Once an endorsement from an academic alternative provider expires after three failures individuals will be required to re-qualify by completing the basic licensing course for the license sought.

(k) The effective date of this section is February 24, 2011. [~~April 15, 2010.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005504
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.9, Standardized Field Sobriety Testing Practitioner (SFST). "Practitioner" is removed from the title and replaced by "proficiency" to be consistent with other rules. Subsection (a) is amended to replace "practitioner" with "proficiency" to be consistent with other rules. Subsection (c) is amended to reflect the effective date of the changes.

These amendments are necessary to clarify that this proficiency certificate is not a requirement to perform SFST.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be

a positive benefit to the public by clarifying that this proficiency certificate is not a requirement to perform SFST.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.9. Standardized Field Sobriety Testing (SFST) Proficiency [~~Practitioner (SFST)~~].

(a) To qualify for a standardized field sobriety testing proficiency [~~practitioner~~] certificate, an applicant must meet all proficiency requirements including:

(1) successful completion of the current National Highway Traffic Safety Administration (NHTSA) approved SFST Practitioner Course as reported by an approved training provider,

(2) currently appointed as a peace officer,

(3) two years of experience administering SFST,

(4) completion of SFST Practitioner Course, SFST Practitioner Update, DRE Update, SFST instructor, or DRE instructor within past 24 months,

(5) demonstrated proficiency in administration of SFST before a certified SFST Instructor or NHTSA representative, and

(6) submission of completed application, in the format currently prescribed by the commission, and any required fee.

(b) An [~~A~~] SFST proficiency [~~practitioner~~] certificate will be valid for two (2) years from date of issue. After that time period, the applicant must re-qualify.

(c) The effective date of this section is February 24, 2011. [~~September 1, 2007.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005507

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 7, 2010

For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §221.13

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.13, Emergency Telecommunications Proficiency. Subsection (a) is amended to update the course requirements for Basic Telecommunications certificates. Subsection (b) is amended to update the course requirements for Intermediate Telecommunications certificates. Subsection (c) is amended to update the course requirements for Advanced Telecommunications certificates. Subsection (d) is amended to reflect the effective date.

These amendments are to provide clarification for individuals seeking Emergency Telecommunications Proficiency Certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be an effect on state or local governments as a result of administering this section. Agencies may be required to replace currently scheduled training sessions with other training courses or add additional training courses.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by eliminating the need for continual rule changes pertaining to the issuance of proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be a positive economic impact for small businesses offering training courses. There will be no cost to individuals.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed complies with Texas Occupations Code, Chapter 1701, §1701.405, Telecommunicators.

No other code, article, or statute is affected by this proposal.

§221.13. Emergency Telecommunications Proficiency.

(a) To qualify for a basic telecommunications proficiency certificate, an applicant must meet all proficiency requirements including:

(1) one year of experience in public safety telecommunications; and

(2) successful completion of courses currently required by Texas Occupations Code §1701.405 and the commission.

[~~(1) successful completion of a 40-hour course developed or approved by the commission;~~]

[~~(2) successful completion of a departmental field training course;~~]

[~~(3) successful completion of TDD/TTY training within the last six (6) months; and~~]

[~~(4) one year of experience in public safety telecommunications.~~]

(b) To qualify for an intermediate telecommunications proficiency certificate, an applicant must meet all proficiency requirements including:

(1) basic telecommunications certification;

(2) at least two years experience in public safety telecommunications;

(3) 120 hours of training; and

(4) successful completion of courses currently required by Texas Occupations Code §1701.405 and the commission.

[(4) successful completion of TDD/TTY training within the last six (6) months; and]

[(5) if the basic telecommunications certificate was issued or qualified for on or after January 1, 2000, successful completion of required courses as specified by the commission, which include:]

[(A) Cultural Diversity;]

[(B) Ethics for Law Enforcement;]

[(C) Crisis Communications;]

[(D) TCIC/NCIC for Full Access Operators; NLETS/TLETS; or Criminal Law; and]

[(E) Spanish for Law Enforcement.]

(c) To qualify for an advanced telecommunications proficiency certificate, an applicant must meet all proficiency requirements including:

(1) intermediate telecommunications certificate;

(2) at least four years experience in public safety telecommunications; and

(3) successful completion of courses currently required by Texas Occupations Code §1701.405 and the commission.

[(3) 240 training hours: and]

[(4) successful completion on TDD/TTY training within the last six (6) months.]

(d) The effective date of this section is February 24, 2011. [December 1, 2007.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005502

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 7, 2010

For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §221.33

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §221.33, Standardized Field Sobriety Testing (S.F.S.T.) Instructor Proficiency. The title is amended to match other rules about Standardized Field Sobriety Testing (SFST). Subsection (a) is amended to match other rules about SFST and remove the certificate requirement for teaching SFST. Subsection (b) is amended to match other rules about SFST. Subsection (c) is amended to reflect the effective date of the changes.

These amendments are necessary for consistency in the rules and to allow qualified instructors without this certificate to teach SFST.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no effect on state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by allowing more instructors to teach SFST and thereby increasing DWI enforcement.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E. Highway 290, Ste. 200, Austin, TX 78723-1035.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.33. SFST [Standardized Field Sobriety Testing (S.F.S.T.)] Instructor Proficiency.

(a) [To instruct Standardized Field Sobriety Testing (S.F.S.T.) a person must be certified as a S.F.S.T. Instructor.] To qualify for an SFST [a S.F.S.T.] instructor proficiency certificate, an applicant must meet all proficiency requirements including:

(1) successful completion of the NHTSA SFST [National Highway Transportation Safety Administration (NHTSA) S.F.S.T.] Practitioner course;

(2) at least three years' experience as an SFST [a S.F.S.T.] practitioner;

(3) current instructor license or certificate issued by the commission;

(4) successful completion of the commission approved SFST [S.F.S.T.] Instructor Course or Drug Recognition Expert (DRE) Instructor Course;

(5) completion of an SFST [a S.F.S.T.] Instructor Update Course or DRE Update Course within the last two (2) years;

(6) demonstrated proficiency in administration of SFST [S.F.S.T.] before a certified SFST [S.F.S.T.] Instructor or NHTSA representative; and

(7) submit a completed application, in the format currently prescribed by the commission, and any required fee.

(b) An SFST [~~S.F.S.T.~~] Instructor proficiency certificate will be valid for two (2) years from date of issue. After that time period, the applicant must re-qualify.

(c) The effective date of this section is February 24, 2011. [~~February 1, 2007.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005506
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §221.37

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §221.37, Cybercrime Investigator Proficiency. Subsection (a) lists the requirements for the certificate. Subsection (b) reflects the effective date.

This addition is necessary to provide recognition for investigators specially trained in cybercrimes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there may be an effect on state or local governments as a result of administering this section. An agency may choose to offer supplemental pay for this certificate.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by encouraging more investigators to be trained in detecting cybercrimes.

The Commission has also determined that there may be a positive economic impact for small businesses. Training providers will be able to offer an additional course and may see an increase in business.

The Commission has determined that there will be a monetary and time cost to the individual to achieve this proficiency certificate; however, there will be a positive benefit by investigators receiving additional training.

Comments may be submitted electronically to *public.comment@tcleose.state.tx.us* or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 E Highway 290, Ste. 200, Austin, TX 78723-1035.

The new rule is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221. 37. Cybercrime Investigator Proficiency.

(a) To qualify, an applicant for a cybercrime investigator proficiency certificate must meet all proficiency requirements, and must have:

(1) at least two years full time salaried experience as a peace officer;

(2) successful completion of the current cybercrimes investigator certification course(s); and

(3) submitted a completed application, in the format currently prescribed by the commission, and any required fee.

(b) The effective date of this section is February 24, 2011.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005508
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

SUBCHAPTER K. CARRYING OF WEAPONS

37 TAC §§341.80 - 341.91

The Texas Juvenile Probation Commission proposes new Subchapter K, §§341.80 - 341.91, concerning juvenile probation officers carrying weapons. These rules are being proposed in an effort to further the safe and lawful implementation of juvenile probation officers carrying a firearm in the course of their duties pursuant to Senate Bill 1237 (81R).

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the new rules are in effect, there will be no fiscal implications for state government. The fiscal impact in local government will be connected directly to the cost of training and the procurement and maintenance of the weapons the juvenile probation officers are authorized and required to carry in the course of their duties. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the rules are in effect, the public benefit expected as a result of enforcement or implementation will be enhanced public safety. Safety is the paramount concern when weapons are involved. Juvenile probation officers who are authorized to carry a weapon in the course of their duties can only do so safely if they are knowledgeable in the legal use of the weapons and if they engage in continuing education specifically designed to enhance

the officer's skills and proficiency. The proposed standards help ensure that the requirements of Senate Bill 1237 (81R) are implemented safely.

Public comments on the proposed rules may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§341.80. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Draw--To un-holster a weapon in preparation for use against a perceived threat.

(2) Empty-Hand Defense--Defensive tactics through the use of pressure points, releases from holds, blocking and striking techniques using natural body weapons such as an open hand, fist, forearm, knee, or leg.

(3) Intermediate Weapons--Weapons designed to neutralize or temporarily incapacitate an assailant. This level of self-defense employs the use of tools to neutralize aggressive behavior when deadly force is not justified but when empty-hand defense is not sufficient for escaping from a physical confrontation. Within this category are electronic restraint devices, irritants and impact weapons.

(4) On-Duty--An officer is engaged in the actual discharge of the officer's duties when the officer is within the course and scope of his/her employment and is actually authorized to engage in the work being performed. Being on-call is not considered as being engaged in the actual discharge of the officer's duties unless or until the officer is actually called into service.

§341.81. Applicability and Authorization.

(a) Applicability. These standards apply only to actively certified juvenile probation officers who are authorized to carry a firearm pursuant to this subchapter.

(b) Authorization to Carry a Firearm.

(1) In accordance with §142.006 of the Texas Human Resources Code, a juvenile probation officer is authorized to carry a firearm during the course of the officer's official duties if:

(A) The officer possesses a certificate of firearms proficiency issued by the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) under §1701.258 of the Texas Occupations Code verifying successful completion of the TCLEOSE Juvenile Probation Officer Firearms Certification Course;

(B) The chief juvenile probation officer of the juvenile probation department that employs the juvenile probation officer authorizes the juvenile probation officer to carry a firearm in the course of the officer's official duties; and

(C) The juvenile probation officer has been employed for at least one year by the juvenile probation department described in subparagraph (B) of this paragraph;

(2) This subchapter does not authorize a juvenile probation officer to carry a firearm while not on-duty;

(3) A license obtained under Subchapter H, Chapter 411 of the Texas Government Code (i.e., Concealed Handgun License), does not enable a certified juvenile probation officer to carry a firearm in the course of the officer's official duties and shall not satisfy, or be accepted in lieu of, the requirements contained in this subchapter.

§341.82. Requirements to Qualify for a Firearms Proficiency Certificate.

Prior to obtaining a firearms proficiency certificate from TCLEOSE, a juvenile probation officer seeking authorization to carry a firearm during the course of his/her official duties shall provide proof to the Texas Juvenile Probation Commission (the Commission) of the following required qualifications:

(1) current employment as a juvenile probation officer for at least one year by the county juvenile probation department;

(2) active certification in good standing as a juvenile probation officer by the Texas Juvenile Probation Commission;

(3) appropriate documentation from each chief juvenile probation officer who has authorized the applicant's participation in the juvenile probation officer firearms proficiency training program and that the applicant has been subjected to a complete search of local, state and national records to disclose any criminal record or criminal history;

(4) written documentation from each chief juvenile probation officer who has authorized the applicant's participation in the juvenile probation officer firearms proficiency training program that the applicant has been examined by a psychologist, selected by the current employing department and licensed by the Texas State Board of Examiners of Psychologists; and

(5) a written declaration from the examining psychologist that the officer possesses the requisite psychological and emotional health to carry a firearm in the course of the officer's official duties.

§341.83. Responsibilities of a Juvenile Probation Officer Authorized to Carry a Weapon.

A juvenile probation officer authorized to carry a firearm in accordance with this subchapter shall:

(1) comply with the requirements of this subchapter, the officer's department policies and procedures and the laws of this State and of the United States;

(2) be knowledgeable of the places where a firearm or other weapons are prohibited;

(3) immediately report to the chief juvenile probation officer and the Commission any criminal arrests, charges or convictions;

(4) satisfy the firearms proficiency requirements in accordance with §221.1(b) of this title at least once every 12 months;

(5) successfully complete all sections of the TCLEOSE training course for juvenile probation officers in accordance with §221.35(b) and (c) of this title, including the classroom training and range qualification;

(6) utilize TCLEOSE approved forms for the documentation of the requirements of paragraph (4) and (5) of this subsection and provide copies to the Commission.

(7) maintain the firearm and all other authorized weapons in proper working order at all times;

(8) be responsible for the safe handling of the firearm and all other authorized weapons; and

(9) store the firearm and other weapons in a secure, locked location designed for secure storage of a weapon when the firearm or other weapon is not on the officer's person.

§341.84. Use of Force Continuum.

(a) A juvenile probation officer who satisfies the requirements of this subchapter is justified in using force for the protection of persons pursuant to Chapter 9 of the Texas Penal Code.

(b) Prior to carrying a firearm in the course of the officer's duties, a juvenile probation officer authorized to carry a firearm in accordance with this subchapter shall:

(1) Receive adequate training in the use of an empty-hand defense tactics; and

(2) Receive adequate training in the use of at least one intermediate weapon prior to carrying a firearm in the course of the officer's duty.

(c) Carry at least one intermediate weapon at all times when the officer carries a firearm.

§341.85. Chief Juvenile Probation Officers or Other Supervising Officer.

(a) The chief juvenile probation officer, or the supervising officer of a juvenile probation officer who is authorized to carry a firearm, shall be subject to the same requirements as an officer authorized to carry a firearm in accordance with this subchapter. This requirement does not mandate the chief juvenile probation officer or the other supervising officer carry a firearm or other weapon in the course of their duties.

(b) The chief juvenile probation officer, or designee, shall notify TCLEOSE and the Commission within 24 hours if the department's authorization of a juvenile probation officer to carry a firearm is rescinded.

(c) The chief juvenile probation officer, or designee, shall submit the requisite forms to TCLEOSE and the Commission within 24 hours if an officer who is authorized to carry a firearm separates from the department.

(d) The chief juvenile probation officer, or designee, shall submit to the Commission the department's approved policies and procedures regarding a juvenile probation officer's authorization to carry a firearm in accordance with this subchapter.

(e) The chief juvenile probation officer, or designee, shall submit to the Commission within five working days copies of all requisite training certificates and forms submitted to the TCLEOSE in accordance with this subchapter.

§341.86. Written Policies and Procedures.

Each chief juvenile probation officer who authorizes a juvenile probation officer to carry a firearm in accordance with the requirements contained herein shall have written policies and procedures that:

(1) define which juvenile probation officers within the department are authorized to carry firearms;

(2) stipulate whether the firearm is to be purchased and maintained by the department or the individual officer;

(3) require that the firearm and all other authorized weapons remain under the control of the officer authorized to carry the firearm and weapon;

(4) require that the firearm be fully loaded when carried or worn on-duty;

(5) require that the officer display credentials identifying the officer as a certified juvenile probation officer while carrying a firearm in accordance with this subchapter;

(6) specify the firearms to be carried, including the type of firearm, manufacturer, model and caliber;

(7) specify the type of ammunition authorized for use in the firearm;

(8) prescribe whether the firearm will be carried in plain view or concealed;

(9) require that the firearm be encased in an appropriate holster and be worn or carried in such a manner that is appropriate to the situation;

(10) define the process for reporting and investigating use of force incidents;

(11) define the process for rescinding or suspending the authorization to carry a firearm; and

(12) prohibit the consumption of alcohol while carrying a firearm or intermediate weapon.

§341.87. Reporting and Investigating Use of Force Incidents.

Each juvenile probation department shall have written policies and procedures for reporting and investigating each incident in which a use of force involving an empty-hand defense tactic, firearm or intermediate weapon is discharged, utilized or drawn on an individual. The policies and procedures shall include:

(1) notification to TCLEOSE and the Commission;

(2) internal investigation procedures; and

(3) a requirement that a juvenile probation officer be placed on administrative leave until the conclusion of an investigation of a use of force.

§341.88. Records.

(a) The personnel file of each juvenile probation officer authorized to carry a firearm in accordance with this subchapter shall contain a copy of the:

(1) Firearms Proficiency for Juvenile Probation Officers Application;

(2) PID Assignment (TCLEOSE C-1);

(3) Criminal history checks conducted pursuant to the requirements of this subchapter;

(4) Licensee Psychological and Emotional Health Declaration (TCLEOSE L-3); and

(5) Proof of annual firearms proficiency.

(b) Juvenile probation departments shall allow TCLEOSE, other law enforcement agencies and the Commission access to records pertaining to firearms and use of force incidents for auditing and investigation purposes.

§341.89. Training and Qualification Requirements.

(a) No juvenile probation officer shall be authorized to carry a firearm in the course of their duties unless the officer has:

(1) Completed the TCLEOSE approved firearms training program; and

(2) Received a certificate of firearms proficiency from TCLEOSE as provided in §221.1 of this title.

(b) All training received pursuant to the requirements of this subchapter shall be received from a TCLEOSE approved instructor.

(c) All training received pursuant to the requirements of this subchapter shall be designed with the intent to prepare juvenile probation officers to carry and utilize firearms, intermediate weapons and empty-hand defense tactics in the context of self-defense and in defense of a third party.

(d) In addition to the training requirements contained in Chapter 344 of this title relating to maintaining an active certification as a JPO, a juvenile probation officer authorized to carry a firearm in accordance with this subchapter, shall successfully complete 20 hours of continuing education every two years. The continuing education shall be specially designed to enhance the officer's skills and knowledge relating to the proficient and legal use of a firearm, empty-hand defense and intermediate weapon as authorized by this subchapter. The training shall include, but not be limited to:

(1) Use of Force;

(2) Weapons Retention; and

(3) Crisis Intervention.

(e) Upon completion of each training requirement, the chief juvenile probation officer or designee, shall submit proof of the successful completion of the training to the Commission within five working days of completion of the training.

§341.90. Disqualifying Conduct.

Pursuant to §142.006(b) of the Texas Human Resources Code, a juvenile probation officer is disqualified from seeking authorization to carry a firearm if the officer has been assigned the role of designated or sustained perpetrator in a TJPC abuse, neglect or exploitation investigation.

§341.91. Prohibited Conduct.

A certified juvenile probation officer authorized to carry a firearm during the course of the officer's official duties is strictly prohibited from engaging in the following conduct:

(1) firing warning shots;

(2) shooting at moving vehicles; and

(3) using a striking weapon as an intermediate weapon.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005511
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 424-6710

♦ ♦ ♦

CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

SUBCHAPTER C. DISCIPLINARY ACTIONS AND HEARINGS

37 TAC §§349.307, 349.308, 349.311

The Texas Juvenile Probation Commission proposes new rules in Subchapter C, §§349.307, 349.308, and 349.311, concerning disciplinary actions and hearings. These rules are being proposed in an effort to clarify and formalize existing internal criteria used in making disciplinary decisions.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the new rules are in effect, there will be no fiscal implications for state or local government. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the rules are in effect, the public benefit expected as a result of enforcement or implementation will be an understanding of the rules affecting disciplinary actions relating to certifications issued by the Commission.

Public comments on the proposed rules may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to *Kristy.Almager@tjpc.state.tx.us* or faxed to (512) 424-6718.

The rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these rules.

§349.307. Disciplinary Sanctions.

(a) Under the authority of §141.064 of the Texas Human Resources Code, the Commission may, upon a determination that censure is warranted, impose one of the following actions for a violation of law or a Commission administrative rule:

(1) revocation of an officer's certification;

(2) suspension of an officer's certification; or

(3) reprimand of a certified officer.

(b) A person is entitled to a hearing if revocation or suspension of an officer's certification is recommended by the Commission.

§349.308. Disciplinary Guidelines.

(a) The purpose of these guidelines is to:

(1) provide a framework for analysis by staff members, administrative law judges, and the Board in the making of recommendations in disciplinary matters;

(2) promote consistency in the exercise of sound discretion by Board members in certification and disciplinary matters; and

(3) provide guidance in the resolution of potentially contested matters.

(b) The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation, which may include:

(A) whether the conduct was in violation of a law;

(B) the nature and extent of the harm caused; and/or

(C) the frequency of and time period covered by the violation(s).

(2) the nature of the violation, which may include:

(A) the relationship between the certified officer and the person harmed;

(B) the vulnerability of the person harmed; and/or

(C) the culpability of the certified officer, such as whether the violation:

(i) was intentional or premeditated;

(ii) due to blatant disregard or gross neglect;

(iii) resulted from simple error or negligence; and/or

(iv) evidences lack of integrity, trustworthiness, or honesty.

(D) the degree to which actions showed lack of good judgment.

(3) the degree of personal accountability taken by the certified officer, which may include:

(A) admission of wrongdoing and acceptance of responsibility;

(B) showing appropriate remorse or concern;

(C) efforts to ameliorate the harm or make restitution;

(D) cooperation with an investigation or request for information; and/or

(E) attempts to deny or conceal the misconduct or falsify documents.

(4) Any other relevant factors, which may include:

(A) the certified officer's record of training, length of service, position, job responsibilities, and performance history;

(B) the presence or absence of prior or subsequent violations;

(C) any other relevant circumstances, including aggravating or mitigating factors, such as environmental factors that may have contributed to the officer's actions;

(D) disciplinary action taken in similar incidents;

(E) disciplinary action taken by the employer and the employer's recommendation to the commission; and/or

(F) any other matter justice may require.

§349.311. Disciplinary Sanctions.

(a) The Board shall permanently revoke the certification of any officer, or permanently deny the application of a person if, after a contested case hearing, it is determined that the officer or applicant:

(1) engaged in or solicited any sexual contact or a romantic relationship with a juvenile;

(2) possessed or distributed child pornography;

(3) is convicted of, or placed on deferred adjudication for, a felony level offense against a person or an offense that requires registration as a sex offender under Chapter 62 of the Code of Criminal Procedure; or

(4) is convicted of, or placed on deferred adjudication for, a felony level violation of the controlled substances provisions of the Texas Health and Safety Code, committed in the workplace or while on duty as a certified officer.

(b) The rules enumerated above are not intended to be exhaustive criteria. The Board may, at its discretion, recommend revocation of the certification of any officer who violates applicable laws or Commission rules or standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005510
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: November 7, 2010
For further information, please call: (512) 424-6710

♦ ♦ ♦

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

♦ ♦ ♦

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 5. CARBON DIOXIDE

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §5.101, §5.102

The Railroad Commission of Texas withdraws the proposed new §5.101 and §5.102 which appeared in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2446).

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005476
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 22, 2010
For further information, please call: (512) 475-1295

SUBCHAPTER B. GEOLOGIC STORAGE AND ASSOCIATED INJECTION OF ANTHROPOGENIC CARBON DIOXIDE

16 TAC §§5.201 - 5.208

The Railroad Commission of Texas withdraws the proposed new §§5.201 - 5.208 which appeared in the March 26, 2010, issue of the *Texas Register* (35 TexReg 2446).

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005477
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: September 22, 2010
For further information, please call: (512) 475-1295

♦ ♦ ♦

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 4. TEXAS MILITARY PREPAREDNESS COMMISSION

SUBCHAPTER A. TEXAS MILITARY VALUE REVOLVING LOAN FUND PROGRAM

1 TAC §§4.1, 4.3, 4.5, 4.7, 4.9, 4.11, 4.13, 4.15, 4.17, 4.19

The Texas Military Preparedness Commission adopts the repeal of 1 TAC §§4.1, 4.3, 4.5, 4.7, 4.9, 4.11, 4.13, 4.15, 4.17, and 4.19, concerning the Texas Military Value Revolving Loan Fund Program, without changes to the proposal as published in the March 19, 2010, issue of the *Texas Register* (35 TexReg 2239).

The adopted repeal reflects the changes in House Bill 2546, enacted by the 2009 Legislature, and also implements best practices of the Texas Economic Development and Tourism Office and allows for the adoption of new Chapter 4 rules.

No comments were received regarding the proposal.

The repeals are adopted under House Bill 2546, Section 24, enacted by the 2009 Legislature, which provided rulemaking authority to the Economic Development and Tourism Office.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2010.

TRD-201005449
Keith Graf
Director, Texas Military Preparedness Commission
Office of the Governor
Effective date: October 10, 2010
Proposal publication date: March 19, 2010
For further information, please call: (512) 475-0487

♦ ♦ ♦

1 TAC §§4.1 - 4.8

The Texas Military Preparedness Commission adopts new Chapter 4, §§4.1 - 4.8, concerning the Texas Military Value Revolving Loan Fund Program, without changes to the proposed text as published in the March 19, 2010, issue of the *Texas Register* (35 TexReg 2239). The rules will not be republished.

The adopted rules reflect the changes in House Bill 2546, enacted by the 2009 Legislature, and also implement best practices of the Texas Economic Development and Tourism Office.

No comments were received regarding the proposal.

The new rules are adopted under House Bill 2546, Section 24, enacted by the 2009 Legislature, which provided rulemaking authority to the Economic Development and Tourism Office.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2010.

TRD-201005450
Keith Graf
Director, Texas Military Preparedness Commission
Office of the Governor
Effective date: October 10, 2010
Proposal publication date: March 19, 2010
For further information, please call: (512) 475-0487

♦ ♦ ♦

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER F. COLLECTIONS AND DISTRIBUTIONS

1 TAC §55.142

The Office of the Attorney General, Child Support Division (CSD) adopts new 1 TAC §55.142, concerning the reporting of child support payments as unclaimed property. The section is adopted without changes to the proposed text as published in the August 20, 2010, issue of the *Texas Register* (35 TexReg 7169) and will not be republished. The section outlines CSD policy for the reporting of child support payments held for disbursement as unclaimed property.

The purpose of the new section is to provide information to the public regarding child support payments held for disbursement, and the timeline and criteria for reporting those payments as unclaimed property.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Family Code §231.002 which authorizes the State's Title IV-D agency to adopt rules for the provision of child support services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 21, 2010.

TRD-201005461
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: October 11, 2010
Proposal publication date: August 20, 2010
For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

♦ ♦ ♦

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 78. ATHLETE AGENTS
SUBCHAPTER A. REGISTRATION

The Office of the Secretary of State adopts amendments to §§78.1, 78.13, and 78.21, concerning Registration and Renewal of Athlete Agents, Updates, and Fees, and the repeal of §78.11, concerning Renewal for Registration of Athlete Agent. The amendments and repeal are adopted without changes to the text as proposed in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6603) and will not be republished. The amendments and repeal clarify and streamline the registration and renewal requirements.

The Office of the Secretary of State has determined that athlete agent registrants do not need to repeat all of the same information on the renewal that they have already stated on the initial registration. The amendments and repeal will remove the requirement that renewals contain the same information on the same form as initial registrations and allow the Office of the Secretary of State to create a separate and simpler form for renewals.

In addition, the adopted amendment states a requirement that all athlete agent registrants, regardless of organizational form, submit with a registration or renewal the name and address of each individual who recruits or solicits athletes on behalf of the registrant, and update the information as necessary. These supplemental application requirements apply statutorily to corporations, associations, and partnerships (Texas Occupations Code Annotated §2051.104). The adopted amendment extends the supplemental application requirements to apply to all registrants, regardless of organizational form.

Finally, the adopted amendments and repeal consolidate the registration and renewal requirements into one rule, eliminating repetitive information and thus any issues of consistency associated with the repeated information.

The Office of the Secretary of State received no comments concerning the proposed amendments or repeal.

1 TAC §§78.1, 78.13, 78.21

Statutory Authority

The amendments are adopted under the authority of §2051.051 of the Texas Occupations Code, which provides that the secretary may adopt rules necessary to administer the chapter and set reasonable and necessary fees for the administration of the chapter; §2051.102, which provides that a registration application "must provide information required by the secretary of state;" and §2051.108(b)(3), which provides that a renewal must contain "any other information prescribed by the secretary of state."

Chapter 2051 of the Texas Occupations Code is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005544
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: October 14, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 463-5562

♦ ♦ ♦

1 TAC §78.11

Statutory Authority

The repeal is adopted under the authority of §2051.051 of the Texas Occupations Code, which provides that the secretary may adopt rules necessary to administer the chapter and set reasonable and necessary fees for the administration of the chapter; §2051.102, which provides that a registration application "must provide information required by the secretary of state;" and §2051.108(b)(3), which provides that a renewal must contain "any other information prescribed by the secretary of state."

Chapter 2051 of the Texas Occupations Code is affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005545
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: October 14, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 463-5562

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 55. RULES FOR ADMINISTRATIVE SERVICES

SUBCHAPTER D. NEGOTIATION OF CERTAIN CONTRACT DISPUTES

16 TAC §55.53, §55.54

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 55, Subchapter D, §55.53 and §55.54, regarding notice requirements using certified mail with electronic return receipt for contractual disputes involving administrative services, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6417), and will not be republished. The adoption takes effect October 15, 2010.

The amendments implement changes in law enacted by House Bill 2310 ("HB 2310"), Section 3, 81st Legislature, 2009, which amended Texas Occupations Code, Chapter 51 relating to general licensing provisions and proscribing notice procedures that provide for notice by certified mail with electronic return receipt. A detailed summary of the proposed amendments was included in the notice of proposed rules published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6417).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed amendments were published in the July 23, 2010, issue of the *Texas Register.* The 30-day public comment period closed on August 23, 2010. The Department did not receive any public comments on the proposed amendments.

The amendments are adopted under Texas Occupations Code, Chapter 51, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 754 (Elevators and Escalators), and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 953 (For Profit Legal Service Contract Companies), 1151 (Property Tax Professionals), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1306 (Identity Recovery Service Contract Providers and Administrators), 1601 (Barbers), 1602 (Cosmetology), 1603 (Regulation of Barbering and Cosmetology), 1703 (Polygraph Examiners), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2105 (Talent Agencies), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Vehicle Towing and Booting), 2309 (Used Automotive Parts Recyclers), and 2501 (Personnel Employment Services). No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005548
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 15, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 463-7348

♦ ♦ ♦

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT

SUBCHAPTER B. POWERS AND RESPONSIBILITIES

16 TAC §60.24

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 60, Subchapter B, §60.24, regarding the duration of advisory committees/boards/councils governed by the Commission, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6419), and will not be republished. The adoption takes effect October 15, 2010.

The amendments comply with Texas Government Code, §2110.008 which authorizes a state agency that has established an advisory committee to designate the date on which the committee will automatically be abolished. The committee may continue in existence after that date only if the agency amends the rule to provide for a different abolishment date.

The adopted amendments continue the existence of the Advisory Board on Barbering, Advisory Board on Cosmetology, Architectural Barriers Advisory Committee, Air Conditioning and Refrigeration Contractors Advisory Board, Auctioneer Education Advisory Board, Board of Boiler Rules, Electrical Safety and Licensing Advisory Board, Elevator Advisory Board, Licensed Court Interpreter Advisory Board, Medical Advisory Committee, Property Tax Consultants Advisory Council, Towing, Storage, and Booting Advisory Board, Vehicle Protection Product Warrantor Advisory Board, Water Well Drillers Advisory Council, and the Weather Modification Advisory Committee. The rule adoption extends the duration of these advisory bodies to September 1, 2014.

Additionally, the amendments reflect the name change of the Towing and Storage Advisory Board to the Towing, Storage, and Booting Advisory Board and establish abolishment dates, by rule, for advisory boards that have been recently created: Polygraph Advisory Committee, Texas Tax Professional Advisory Committee, and the Used Automotive Parts Recycling Advisory Board. A detailed summary of the proposed amendments was included in the notice of proposed rules published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6419).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed amendments were published in the July 23, 2010, issue of the *Texas Register.* The 30-day public comment period closed on August 23, 2010. The Department did not receive any public comments on the proposed amendments.

The amended rule is adopted under Texas Occupations Code, Chapter 51, §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department, and Texas Government Code, Chapter 2110, §2110.008 which authorizes state agencies to continue the existence of an advisory committee beyond the four-year period following the date of creation of the committee.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Department's enabling statute. Other statutes also affected by the proposal are: Texas Occupations Code, Chapters 1152 (property tax consultants), 1302, (air conditioning and refrigeration contractors), 1305 (electricians), 1601 (barbers), 1602 (cosmetologists), 1603 (barbers and cosmetologists), 1802 (auctioneers), 1901 (water well drillers), 1902 (pump installers); 2052 (combative sports); 1703 (polygraph examiners); 1151 (tax professionals); 2306 (vehicle protection products); 2308 (towing, storage, and booting); 2309 (used automotive parts recycling); Texas Government Code, Chapters 57 (licensed court interpreters) and 469 (architectural barriers); Texas Health and Safety Code, Chapter 754 (elevators) and Chapter 755 (boilers); and Texas Agriculture Code, Chapters 301 and 302 (weather modification). No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005549
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 15, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 463-7348

♦ ♦ ♦

SUBCHAPTER D. CRIMINAL HISTORY AND LICENSE ELIGIBILITY

16 TAC §60.40

The Texas Commission of Licensing and Regulation ("Commission") adopts an amendment to an existing rule at 16 Texas Administrative Code (TAC) Chapter 60, §60.40, regarding license eligibility requirements for persons with criminal histories, without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6882), and will not be republished. The adoption takes effect October 15, 2010.

House Bills 2310, 963, and 2808, 81st Legislature, Regular Session (2009) amended Texas Occupations Code Chapter 51 (Texas Department of Licensing and Regulation) and Chapter 53 (Consequences of Criminal Conviction). These bills changed the license eligibility requirements for persons with criminal histories and expanded the authority of the Commission and the Department to review and consider a person's criminal history information.

The Commission adopted rules at its June 2 - 3, 2010, meeting to implement House Bills 2310, 963, and 2808. The adoption included amendments to existing §60.40 and two new rules, §60.41 and §60.42, regarding license eligibility requirements for persons with criminal histories. The amendments and new rules were effective July 1, 2010.

The current amendment, as described in this notice, makes a technical correction to §60.40 by reinserting clarifying language that was previously included in the rule and was inadvertently deleted in the amendments that were effective July 1, 2010. The current amendment is necessary to clarify the scope of §60.40(b).

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed amendment was published in the August 13, 2010, issue of the *Texas Register.* The 30-day public comment period closed on September 13, 2010. The Department did not receive any public comments on the proposed amendments.

The rule is adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute, and Chapter 53, the statute that addresses license eligibility for persons with criminal convictions. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 754 (Elevators and Escalators) and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 953 (For Profit Legal Service Contract Companies), 1151 (Property Tax Professionals), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1306 (Identity Recovery Service Contract Providers and Administrators), 1601 (Barbers), 1602 (Cosmetology), 1603 (Regulation of Barbering and Cosmetology), 1703 (Polygraph Examiners), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2105 (Talent Agencies), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Vehicle Towing and Booting), 2309 (Used Automotive Parts Recyclers), and 2501 (Personnel Employment Services). No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005550
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 15, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 463-7348

♦ ♦ ♦

SUBCHAPTER I. CONTESTED CASES

16 TAC §60.306

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 60, Subchapter I, §60.306, regarding notice requirements using certified mail with electronic return receipt for contested cases involving licensees, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6420), and will not be republished. The adoption takes effect October 15, 2010.

The amendments implement changes in law enacted by House Bill 2310 ("HB 2310"), §3, 81st Legislature, 2009, which amended Texas Occupations Code, Chapter 51 relating to general licensing provisions and prescribing notice procedures that provide for notice by certified mail with electronic return receipt. A detailed summary of the proposed amendments was included in the notice of proposed rules published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6420).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed amendments were published in the July 23, 2010, issue of the *Texas Register.* The 30-day public comment period closed on August 23, 2010. The Department did not receive any public comments on the proposed amendments.

The rules are adopted under Texas Occupations Code, Chapter 51, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 754 (Elevators and Escalators), and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 953 (For Profit Legal Service Contract Companies), 1151 (Property Tax Professionals), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1306 (Identity Recovery Service Contract Providers and Administrators), 1601 (Barbers), 1602 (Cosmetology), 1603 (Regulation of Barbering and Cosmetology), 1703 (Polygraph Examiners), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2105 (Talent Agencies), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Vehicle Towing and Booting), 2309 (Used Automotive Parts Recyclers), and 2501 (Personnel Employment Services). No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005551
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 15, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 463-7348

♦ ♦ ♦

CHAPTER 61. COMBATIVE SPORTS

16 TAC §§61.1, 61.10, 61.20 - 61.23, 61.30, 61.40 - 61.42, 61.44, 61.47, 61.80, 61.105, 61.106

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 61, §§61.1, 61.10, 61.20 - 61.23, 61.30, 61.40 - 61.42, 61.44, 61.47, 61.80, 61.105 and 61.106 regarding the combative sports program. Sections 61.1, 61.10, 61.20 - 61.23, 61.30, 61.40 - 61.42, 61.44, 61.80, 61.105 and 61.106 are adopted without changes to the proposed text as published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5689), and will not be republished. The amendments to §61.47 are adopted with changes to the proposed text as published in the July 2, 1010, issue of the *Texas Register* (35 TexReg 5689), and are republished. The adoption takes effect October 15, 2010.

The adopted amendments make appropriate clarifications in the rules for combative sports to ensure the safety of combative sports contestants. The rule changes were recommended by the Medical Advisory Committee at its meeting on October 30, 2009, and at its meeting on April 30, 2010. A detailed summary of the proposed amendments was included in the notice of proposed rules published in the July 2, 2010, issue of the *Texas Register* (35 TexReg 5689).

The adopted amendments to §61.47(a)(1) - (4) extends the age of medical examinations that a contestant must submit from thirty days to six months and ophthalmologic examinations from thirty days to six months in order to reduce the financial costs associated with medical testing. The Medical Advisory Committee previously recommended that medical examinations up to one year in age may be submitted however, the Department's Combative Sports Compliance Specialists recommended that the age of medical examinations be restricted to the same age as ophthalmologic exams, six months, to ensure consistency and uniformity in licensing documents.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed amendments were published in the July 2, 2010, issue of the *Texas Register.* The 30-day public comment period closed on August 2, 2010. The Department did not receive any public comments on the proposed amendments.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 2052, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the adoption.

§61.47. Responsibilities of Contestants.

(a) Medical Examinations. Each contestant applying for a license, or license renewal, shall submit on a department-approved form signed by an examining physician and an examining ophthalmologist or optometrist:

(1) Proof of having passed a comprehensive medical examination within the previous six months; and

(2) Proof of having passed an ophthalmologic medical examination within the previous six months.

(3) The comprehensive medical examination must also include proof that within the last six months, the applicant has been tested for and is free of the Hepatitis C virus and the human immunodeficiency virus (HIV), and that the applicant is not acutely or chronically infected with the Hepatitis B virus by testing the Hepatitis B surface antigen for a non-reactive result, or by other medically acceptable testing procedure that establishes the absence of Hepatitis B infectivity.

(4) Examining physicians, optometrists, and ophthalmologists must be licensed by a state, district or territory of the United States of America.

(b) A contestant applicant must submit to the department all information required by the department's application.

(c) A contestant may not perform under any name that does not appear in departmental records.

(d) Contestants shall report to the weigh in at the scheduled time.

(e) Contestants shall in good faith perform to the best of their abilities.

(f) A contestant who commits a foul under this chapter is subject to administrative sanctions and or penalties in addition to losing points during a contest.

(g) Arguing with an official or refusing to obey the orders of an official is prohibited.

(h) Contestants shall compete in proper ring attire. The trunks' waistband shall not extend above the waistline and the hem may not extend more than two inches below the knee. Ring attire may not have sequins, buttons, tassels or any other decorative items that may become detached during a bout. A fitted mouthpiece shall be worn while competing. Shoes shall be of soft material and shall not be fitted with spikes, cleats, or hard heels. Contestants may not participate in any bout while wearing jewelry, including but not limited to, watches, rings, necklaces, bracelets, earrings, any type of stud used to penetrate body piercings.

(i) All contestants shall be in the dressing room at least 45 minutes before the event is scheduled to begin. The contestants shall be ready to enter the ring immediately after the preceding bout is finished.

(j) After receiving final instructions from the referee, contestants may touch gloves or shake hands and then shall retire to their corners.

(k) After the referee or judge's decision has been announced, both contestants and their seconds shall leave the ring when requested to do so by the referee.

(l) Every contestant shall undergo a pre-fight physical examination. If a contestant's physical exam shows him unfit for competition, the contestant shall not participate in the contest. The manager, chief second, or contestant shall make an immediate report of the facts to the promoter and the department.

(m) If a contestant becomes ill or injured and cannot take part in a bout for which he is under contract, he, his chief second, or his manager shall immediately report the facts to the promoter and the department. The contestant must submit to the department medical proof of the injury or illness.

(n) A positive Hepatitis C, or human immunodeficiency virus (HIV) test, or a positive Hepatitis B surface antigen test or other indication of Hepatitis B infectivity will result in disqualification.

(o) The administration or use of any drugs, alcohol, stimulants, or injections in any part of the body, either before or during a bout to or by a contestant is prohibited unless a drug is prescribed, administered or authorized by a licensed physician and the executive director authorizes the contestant to use the drug. If a contestant is taking prescribed or over the counter medication, he/she must inform the executive director of such usage at least 24 hours prior to the bout.

(p) A person who applies for or holds a license as a contestant shall provide a urine specimen for drug testing either before or after the bout, if directed by the executive director or his designee. The applicant or licensee is responsible for paying the costs of the drug screen.

(q) A positive test (which has been confirmed by a laboratory authorized by the executive director or his designee) for any of the following substances shall be conclusive evidence of a violation of subsection (o).

(1) Stimulants

(2) Narcotics

(3) Cannabinoids (marijuana)

(4) Anabolic agents (exogenous and endogenous)

(5) Peptide hormones

(6) Masking agents

(7) Diuretics

(8) Glucocorticosteroids

(9) Beta--2 agonists (asthma medications)

(10) Anti-estrogenic agents

(11) Alcohol

(r) As a condition of licensure, contestants waive right of confidentiality of medical records relating to treatment or diagnosis of any condition that relates to the contestant's ability to participate in a bout. All medical records submitted to the department are confidential, and shall be used only by the executive director or his representative for the

purpose of ascertaining the contestant's ability to be licensed or participate in a bout.

(s) Medical disqualification of a contestant is for his own safety and may be made at the recommendation of the examining physician or the department. If a contestant disagrees with a medical disqualification, medical suspension or rest period set at the discretion of a ringside physician or a disqualification set by the department, he may request a hearing to show proof of fitness. The hearing shall be provided at the earliest opportunity after the department receives a written request from the contestant or his manager.

(t) The following are gender specific provisions.

(1) Male contestants must wear a protection cup, which shall be firmly adjusted before entering the ring.

(2) Female contestants:

(A) Must wear garments that cover their breasts;

(B) Shall submit to a pregnancy test at weigh-in;

(C) Will be disqualified by a positive pregnancy test; and,

(D) May wear breast protection plates.

(u) Contestants must attend the referee's rules meeting conducted prior to the first bout of an event.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005555
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 15, 2010
Proposal publication date: July 2, 2010
For further information, please call: (512) 463-7348

♦ ♦ ♦

CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

16 TAC §77.40, §77.42

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code ("TAC") Chapter 77, §77.40 and §77.42, regarding the financial security requirements for service contract providers. The rules are being adopted without changes to the proposed text as published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6883), and will not be republished. The adoption takes effect October 15, 2010.

The existing rules at 16 TAC Chapter 77 implement the statutory requirements under Texas Occupations Code, Chapter 1304, the Service Contract Regulatory Act. The amendments affect the general financial security requirements under §77.40 and the requirements for the funded reserve account and security deposit option under §77.42.

The amendments to §77.40: (1) clarify that the financial security must be maintained until the provider has fulfilled or otherwise satisfied its liabilities and obligations to its Texas service contract holders; (2) delete a provision that created confusion for providers in obtaining and maintaining the various forms of financial security; and (3) make technical changes.

The amendments to §77.42: (1) require that the funded reserve account be clearly labeled with the provider's name and "Texas Service Contracts Funded Reserve Account"; (2) require that a provider use the Department's prescribed surety bond form; and (3) clarify how the certificate of deposit shall be stylized.

A detailed summary of the proposed amendments was included in the notice of proposed rules published in the August 13, 2010, issue of the *Texas Register* (35 TexReg 6883).

The adopted rules are necessary to clarify the financial security requirements for service contract providers ("providers"), to standardize the forms of financial security submitted by providers to the Department, and to ensure that providers maintain the required financial security to pay the claims of Texas service contract holders for the terms of those service contracts that are issued and outstanding in the state.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the *Texas Register* on August 13, 2010. The 30-day public comment period closed on September 13, 2010. The Department did not receive any comments on the rule proposal.

The rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. The rules also are adopted under Texas Occupations Code, Chapter 1304, which establishes the service contract program and gives regulatory authority of this program to the Commission and the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005556
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 15, 2010
Proposal publication date: August 13, 2010
For further information, please call: (512) 463-7348

♦ ♦ ♦

CHAPTER 94. PROPERTY TAX PROFESSIONALS

16 TAC §94.100

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 94, §94.100, regarding Code

of Ethics provision relating to acceptance and/or solicitation of a gift, favor, or service by registrants in the property tax professionals program, with changes to the proposed text as published in the May 28, 2010, issue of the *Texas Register* (35 TexReg 4297), and is republished. The adoption takes effect October 15, 2010.

The amendments were recommended by the Tax Professional Advisory Committee ("Committee") at its meeting on September 15, 2010, in response to a petition for rulemaking received by the Department from Sands Stiefer of the Harris County Appraisal District and Robert Mott of Perdue, Brandon, Fielder, Collins & Mott. The amended rule clarifies the application of the rule and delineates specific, recognized exceptions to the general prohibition of unethical conduct.

The exceptions added to §94.100(2) mirror some of the exceptions under §36.10 of the Texas Penal Code. Registrants in the pursuit of their responsibilities must uphold several standards of ethical conduct including, but not limited to, the Texas Penal Code, local employment policies, and the ethical standards set forth in 16 TAC Chapter 94.

The purpose of adopting the same exceptions as found in the penal code is to provide well-founded, and well-known standards of ethical conduct for registrants. By adopting standards that mirror the penal code, a registrant has consistent standards contemplating the same responsibilities as what already exists in criminal law.

Furthermore, by rooting this rule in the penal code, it assists the Department in the application of the rule by providing a resource of a body of persuasive case law and opinions interpreting Penal Code §36.08 and §36.10. A detailed summary of the proposed amendments was included in the notice of proposed rules published in the May 28, 2010, issue of the *Texas Register* (35 TexReg 4297).

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed amendments were published in the May 28, 2010, issue of the *Texas Register.* The 30-day public comment period closed on June 28, 2010. The Department received public comments from fourteen interested parties: Caroline George; Kathy Coronado, City Manager, Pleasanton; Lisa Cromwell; Lou Murdock; Teri Garvey; Corey Worsham, Dallas County Property Tax Director; Robert Mott, Attorney, Perdue Brandon Fielder Collins & Mott LLP; Becky Watson, MBA, RTA, Cass County Tax Assessor-Collector; Sands L. Stiefer, Chief Deputy & General Counsel, Harris County Appraisal District; Tavie Murphy, RTA, Tax Assessor-Collector, Guadalupe County; Luanne Caraway, Tax Assessor-Collector, Hays County; Doris M. Koch, Executive Director and Karen McCord, 2010 President, Texas Association of Appraisal Districts; Jeri Cox, Aransas County Tax Assessor-Collector; and Gary Barber, RTA, President, Tax Assessor-Collectors Association of Texas.

Three comments opposed the changes in the proposed rules:

Public Comment: Caroline George strongly opposed the posted rules stating they will result in fraud and abuse.

Public Comment: Kathy Coronado, City Manager, Pleasanton opposes the published rules stating that there should be no reduction of the strength of the existing rule. Those of us who are in public service must show that our actions are above board without the hint of any impropriety. Being able to accept gifts would hint at impropriety even if the receiver had no such plans.

Public Comment: Lisa Cromwell opposes the published rules stating that they are vague and open the door for corruption. This petition was made by a law firm that defends appraisal districts and chief appraisers. This could allow room for bribes and favors for others to influence the decisions that in the power of the Chief Appraisers. It could also be to win a bid, or sway a value or gain knowledge and insight to property or mineral rights availability. As for food, lodging, or transportation are those to be under fifty dollars too? Lunch or a ticket to an event may be acceptable but a cruise or ski trip should not be.

Department Response: Based on the comment received and the recommendation of the advisory board, the published rules were changed to remove the first and fifth exemption. The Department believes the rule amendments recommended by the advisory board provide clear guidance to the industry. The exceptions are familiar as they are anchored in the similar responsibilities in the penal code. As such, there is an established body in case law that the industry and the Department may look to for guidance in the investigation and resolution of any complaints.

Eleven comments were offered in support of the published rules:

Public Comment: Lou Murdock comments in support of the changes.

Public Comment: Teri Garvey comments in support of the changes.

Public Comment: Corey Worsham, Dallas County Property Tax Director comments in support of the changes.

Public Comment: Robert Mott, Attorney, Perdue Brandon Fielder Collins & Mott LLP comments in support of the changes. The proposed rule removes discretion for the rule and added specific clarity as to the conduct of registrants.

Public Comment: Becky Watson, MBA, RTA, Cass County Tax Assessor-Collector comments in support of the changes.

Public Comment: Sands L. Stiefer, Chief Deputy & General Counsel, Harris County Appraisal District comments in support of the changes.

Public Comment: Tavie Murphy, RTA, Tax Assessor-Collector, Guadalupe County comments in support of the changes stating that the proposed language will help registrants better understand and comply with the requirements.

Public Comment: Luanne Caraway, Tax Assessor-Collector, Hays County comments in support of the changes.

Public Comment: Doris M. Koch, Executive Director and Karen McCord, 2010 President, Texas Association of Appraisal Districts comments in support of the changes.

Public Comment: Jeri Cox, Aransas County Tax Assessor-Collector comments in support of the changes.

Public Comment: Gary Barber, RTA, President, Tax Assessor-Collectors Association of Texas comments in support of the changes.

Department Response: The Department believes the rule amendments recommended by the advisory board provide clear guidance to the industry. The exceptions are familiar as they are anchored in the similar responsibilities in the penal code. As such, there is an established body in case law that the industry and the Department may look to for guidance in the investigation and resolution of any complaints.

The amendments are adopted under Texas Occupations Code, Chapter 51 and Chapter 1151, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1151. No other statutes, articles, or codes are affected by the adoption.

§94.100. Code of Ethics.

Registrants must:

(1) be guided by the principle that property taxation should be fair and uniform, and apply all laws, rules, methods, and procedures, in a uniform manner, to all taxpayers;

(2) not accept or solicit any gift, favor, or service that might reasonably tend to influence the registrant in the discharge of official duties, with the following exceptions:

(A) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(B) a political contribution as defined by Title 15 of the Election Code; or

(C) an item with a value of less than $50, excluding cash or a negotiable instrument;

(3) not use information received in connection with the duties of an appraiser, assessor, or collector for their own purposes, unless such information can be known by ordinary means to any ordinary citizen;

(4) not engage in an official act that is dishonest, misleading, fraudulent, deceptive, or in violation of law;

(5) not conduct their professional duties in a manner that could reasonably be expected to create the appearance of impropriety;

(6) not accept an appraisal, assessment, or collection related assignment that can reasonably be construed as being in conflict with the registrant's responsibility to their jurisdiction, employer, or client, or in which the registrant has an unrevealed personal interest or bias; and

(7) not accept an assignment or responsibility in which the registrant has a personal interest without full disclosure of that interest.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005557
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: October 15, 2010
Proposal publication date: May 28, 2010
For further information, please call: (512) 463-7348

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 174. TELEMEDICINE

The Texas Medical Board (Board) adopts amendments to §§174.1 - 174.3 and 174.5, the repeal of §174.4 and §174.6 and new §§174.6 - 174.12, concerning Telemedicine. The amendments to §§174.1, 174.3 and 174.5 and the repeal of §174.4 and §174.6 and new §174.10 and §174.12 are adopted without changes to the proposed text as published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3390) and will not be republished. New §174.6 and §174.8 are adopted with minor changes to the proposed text as published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3390). The text of the rule will be republished. The amendment to §174.2 and new §174.9 and §174.11 are adopted without changes to the proposed text as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6175) and will not be republished. New §174.7 is adopted with a minor change to the proposal as published in the July 16, 2010, issue of the *Texas Register* (35 TexReg 6175). The text of the rule will be republished.

The amendments to §174.1, concerning Purpose, adds statutory authority for the chapter and exempts out-of-state telemedicine license holders, federally qualified health centers, and health insurance help lines from the chapter. The Board has determined that the changes are necessary to have the rules applied to only certain telemedicine providers.

The amendments to §174.2, concerning Definitions, define distant site provider, established medical site, face-to-face visit, patient site location, patient site presenter; amend the definitions for physician-patient e-mail, telemedicine medical services; and deletes the definition for telepresenter. The Board has determined that it is necessary to establish uniform definitions for those who practice telemedicine in Texas.

The amendments to §174.3, concerning Telemedicine Medical Services, deletes reference to the Telecommunications Infrastructure Fund Board (TIFB). The Board has determined that references to the TIFB must be eliminated since it no longer exists.

The repeal of §174.4, concerning Use of the Internet in Medical Practice, is moved to Chapter 164 as new §164.6. The Board has determined that this section is more appropriately placed in Chapter 164, which relates to advertising.

The amendments to §174.5, concerning Notice of Privacy Practices, provides that physicians that communicate electronically with patients and provide telemedicine medical services, must provide notice to patients of privacy practices, limitations of telemedicine, when in-person evaluations are necessary, and how to file complaints with the Board. The Board has determined that it is necessary to ensure that patients are given appropriate notice to make informed decisions about their care and their rights as consumers. The amendment also changes the name from "Notice of Privacy Practices" to "Notice to Patients".

The repeal and replacement of §174.6, concerning Delegation to and Supervision of Telepresenters, repeals §174.6 and adds new language for new §174.6, concerning Telemedicine Medical Services Provided at an Established Medical Site. The Board has determined that the new language is necessary to establish standards for the provision of telemedicine medical services at established medical sites.

New §174.7, concerning Telemedicine Medical Services Provided at Sites other than an Established Medical Site, establishes under what conditions a distant site provider may provide telemedicine medical services at sites other than an established medical site, such as a patient's home.

New §174.8, concerning Evaluation and Treatment of the Patient, establishes standards for physicians that use telemedicine medical services for the evaluation and treatment of patients.

New §174.9, concerning Technology and Security Requirements, establishes requirements relating to technology and security regarding the provision of telemedicine medical services and physician-patient communications through email. The Board has determined that the new rule will protect confidential electronic communications between physicians and their patients and that electronic medical records are appropriately safeguarded.

New §174.10, concerning Medical Records for Telemedicine Medical Services, establishes the requirements for the maintenance of medical records for telemedicine medical services and what documents are considered part of the medical records. The Board has determined that the changes ensure that medical records are appropriately maintained for patients who receive telemedicine medical services.

New §174.11, concerning On-call Services, establishes that physicians in the same specialty who provide reciprocal services may provide on-call telemedicine medical services for each other's patients. The Board has determined that changes allow for the use of telemedicine medical services through on-call services when a patient's distant site provider is not available.

New §174.12, concerning State Licensure, provides that persons who treat and prescribe through advanced communications technology are engaged in the practice of medicine and must have appropriate licensure unless otherwise exempt. The Board has determined that the changes ensure that those who reside outside of Texas and provide medical services to Texas residents are appropriately licensed.

Sections 174.2, 174.7, 174.9 and 174.11 were previously published for proposal in the April 30, 2010, issue of the *Texas Register,* however these sections were withdrawn and re-proposed in the July 16, 2010, issue of the *Texas Register.* These sections were withdrawn and re-published with changes based on comments received from the April 30, 2010 proposal. The Board received and reviewed comments at the June and August meetings. Some entities made comments twice (repeating their comments) and the relevant sections (§§174.2, 174.7, 174.9 and 174.11) were withdrawn and republished with changes in July. The comments were again reviewed at the August meeting and no further changes were made to the rules, therefore the rules are adopted without changes at this time. A summary of the comments follows.

The Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting, held on March 9, 2010. The comments were incorporated into the proposed rules.

The Board received support for the rules without change from the Texas Department of Insurance, the University of Texas Medical Branch at Galveston, Texas e-Health Alliance and Texas Organization of Rural and Community Hospitals.

Comments:

No comments were received regarding §§174.1, 174.3, 174.4, 174.6, 174.10 and 174.12.

§174.2

The Board received comments regarding §174.2 from the Texas Medical Association and Health and Human Services Commission.

COMMENT ONE: Texas Medical Association

The commenter asked the following questions and made the following suggestions:

(1): Paragraph (1) should be clarified to indicate that a distant site provider also includes physician assistants or advanced practice nurses who are supervised by and delegated authority from a licensed Texas physician in accordance with *Title 3 Texas Occupations Code, Chapter 157.* Otherwise, this provision could be misinterpreted to mean that the usual delegation requirements do not apply to Telemedicine.

(2): Although paragraph (2) states that an established medical site requires a defined physician-patient relationship, it is unclear as to when exactly the creation of a physician-patient relationship must occur. Does the relationship need to be established before the patient arrives at an established medical site for the first time, or can it take place during the initial visit?

(3): Paragraphs (3) and (4) are very similar in definition. Listing examples under each definition may assist in minimizing confusion.

(4): The definition of "patient-site presenter" in paragraph (7)(A) should be amended by adding another subdivision that would permit either the licensed health care individual or a person delegated and supervised by the distant site physician to be the patient site presenter. The commenter states that the provisions of *Section 157.001, Occupations Code* would permit such delegation and supervision, and contends that this ability to delegate and supervise is extremely important to assure access in the rural areas where health care providers are few and far between.

(5): In paragraph (7)(B), there should be an additional sentence stating that all delegation tasks and activities must be done in accordance with the provisions of Chapter 157 of the Occupations Code. This should be done in order to put physicians on notice that compliance with the statute is not limited to solely PAs and APNs.

The Board agrees with comment (1) and amended the language to include PAs and APNs in the definition of distant site provider. Section 174.6(a) addresses comment (2) as it provides that a telemedicine encounter at an established medical site may be used for an initial evaluation and therefore the rules already provide that the relationship does not need to precede the patient's visit to the site. The Board agrees in part with comment (3) and will develop a link on its website for frequently asked questions, including examples for these definitions. The Board disagrees with comment (4) and has determined that patient site presenters must be licensed or certified in a health-related field to ensure patient safety. In addition, this rule is consistent with regulations established by the Health and Human Services Commission as it relates to Medicaid reimbursement requirements for telemedicine services. The Board disagrees with comment (5) and does not believe additional language is necessary as Chapter 157 applies to all delegated acts and additional notice is not required.

COMMENT TWO: Health and Human Services Commission

The commenter recommends adding the word "private" to the last sentence in paragraph (2) so that it would read "a patient's private home is not considered an established medical site." He states that otherwise, the definition excludes a residential facility or other institutional setting where a patient resides. The commenter also recommended substituting "in real time" for "contemporaneously" in paragraph (10). Several grammatical suggestions were also made. The Board agreed with these comments, and changes were made to the section.

§174.5

The Board received comments regarding §174.5 from the Texas Medical Association and Teladoc Medical Services.

COMMENT ONE: Texas Medical Association

The commenter contends that this section of the rule is inconsistent with federal HIPAA privacy requirements. She states that as written, this section would require physicians who are not otherwise subject to the "notice and acknowledgment" requirements of HIPAA to be subject to those provisions, even though telemedicine services are not covered by HIPAA. She notes that even HIPAA provides an exemption from those requirements for medical practices with 10 or fewer full time employees, and that to impose these requirements upon all physicians would have an adverse impact upon both small practices and those in rural areas. She suggests that if the agency seeks to keep this Section of the Rule, it should retain only a "notice" requirement, and delete any references to "written acknowledgment".

The Board disagrees with this comment. After review of the federal HIPAA notice and privacy requirements, the Board has determined that the rules are not in violation with HIPAA. The following was obtained from the HHS Office of Civil Rights' website that supports the Board's position and therefore the Board has adopted the proposed language without amendment:

"The HIPAA Privacy Rule is intended to be flexible enough to address the various types of relationships that covered health care providers may have with the individuals they treat, including those treatment situations that are not face-to-face ... For service provided electronically, the notice must be sent electronically automatically and contemporaneously in response to the individual's first request for service. In this situation, an electronic return receipt or other return transmission from the individual is considered a valid written acknowledgment of the notice."

COMMENT TWO: Teladoc Medical Services

The commenter objects to the references in subsections (b) and (c) that advise the patient to seek additional follow-up care. He states that the language is overly restrictive and that the telemedicine physician can provide appropriate follow-up care.

The Board disagrees with this comment. Stakeholder input led to the inclusion of this language so that patients would be able to give proper informed consent when seeking medical care through the use of telemedicine services.

§174.7

The Board received comments regarding §174.7 from Texas Hospital Association, OptumHealth (national care management organization that provides health care via telemedicine), AmericanWell (technology partner of OptumHealth), Rural Caucus of the Texas Legislature, the Texas Conservative Coalition, Texas Conservative Coalition Research Institute, Texas Medical Association, Teladoc Medical Services, Texas Health and Human Services Commission, Texas Association of Business, Texas Public Policy Foundation, and State Representative Jim Jackson.

COMMENT NO. 1

Texas Hospital Association commented that they have some concern about the proposed language that would require an established patient with new symptoms to be seen in person within 72 hours or at an established medical site. They recommend that the Texas Medical Board, with input from telemedicine experts, health care facilities and professionals, monitor this provision closely on an ongoing basis with regard to its impact on resources and access to health care, particularly in underserved areas, and be prepared to respond to those concerns if necessary by considering a future rule change.

The Board disagrees with this comment in part. The 72-hour provision in subsection (e) pertains only to patients being treated at home with new conditions unrelated to the preexisting conditions they are being treated for via telemedicine. IF the patient's symptoms resolve within 72 hours, then an in-person visit is not required. Because this provision only pertains to patients receiving treatment at home, or somewhere besides an established medicine site, there would likely be no patient site presenter available to confer with the distant site provider to determine whether the patient needs an in-person visit. In addition, Chapter 111 of the Texas Occupations Code pertaining to telemedicine and telehealth services authorizes the Board to adopt rules to ensure that patients receiving care via telemedicine receive appropriate, quality care and to "require a face-to-face consultation between a patient and physician providing a telemedicine medical service within a certain number of days following an initial telemedicine medical service only if the physician has never seen the patient". The adopted rules are in keeping with the intent of the current statute. For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes, but plans to work with stakeholders in the future to monitor how the rules will affect patient care.

COMMENT NO. 2

OptumHealth commented that the rules should focus "on the roles and responsibilities of health professionals providing care, rather than distinguishing based upon how healthcare information is transmitted." OptumHealth also raised concerns that the rules "do not clearly define what is and what is not permitted through various modes of information transmission" and that rules should provide a "flexible regulatory framework that both recognizes the rapidly changing information infrastructure and protects patients and care providers."

The Board disagrees with this comment. The Board has set out requirements for when face-to-face visits are necessary and when the use of advanced communication technology may be used, in part based on where the patient is being treated (established medical site v. site other than an established medical site) and the condition being treated (preexisting condition v. new condition unrelated to previously diagnosed condition). For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

COMMENT NO. 3

AmericanWell commented that the amendments will "deny access to online healthcare services to Texas residents, except for some established patients at established medical sites with established conditions only."

The Board disagrees with this comment. An established medical site can be interpreted to mean almost any location where there is diagnostic equipment available as well as space for a patient site presenter to assist with a physician's evaluation of a patient. For example, this could be a nurse's office at an elementary school or a volunteer fire department, in addition to sites such as local health clinics or hospitals. A "patient site presenter" can be any level or type of health professional as long as they have some form of licensure or certification. The rules also permit the use of telemedicine at locations in addition to established medical sites. For example, a patient with a chronic condition such as diabetes who has difficulty leaving his or her home, would be able to receive treatment via telemedicine while at home for up to one year. The requirements for an in-person evaluation in subsection (a) are in place to ensure that a physician or delegated professional is able to gather necessary diagnostic information on a patient so that appropriate treatment is provided. The requirement in subsection (c) that a patient receiving treatment at home via telemedicine must be seen by a physician at least once a year is again considered to be necessary since the physician will likely have no other way to gather diagnostic information. For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

COMMENT NO. 4

Rural Caucus of the Texas Legislature ("Rural Caucus") commented that the proposed rules would limit access to health care for those residing in rural communities.

The Board disagrees with this comment. The proposed rule provides for a significant expansion of the use of telemedicine in Texas over what is authorized in the current rules. Any extension of the current prohibitive rule places practitioners using telemedicine into potential non-compliance with those rules. The Board does not want to unreasonably limit the use of telemedicine, instead the Board wants to ensure that the regulation of telemedicine is fair, responsible, and provides the appropriate balance between access to health care and patient safety. This is in keeping with our mission to safeguard the citizens of Texas through professional accountability of our licensees. For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

COMMENT NO. 5

Texas Conservative Coalition in conjunction with the Rural Caucus commented that "the proposed definitions of established medical site and patient site presenter have the unintended consequence of restricting, rather than enabling telemedicine... subsection (c) would require that all patients who receive telemedicine services outside of an established medical site, as defined by the proposed rule, must be seen by a physician for an in-person evaluation at least once a year. Creating an in-person 72-hour requirement for a follow-up face-to-face visit with a physician (subsection (e)) would place an additional burden on rural communities that are currently faced with a shortage of primary care physicians... the new rule requires a "distant provider to discontinue care to a patient who is not seen within 72 hours. This approach to medical care delivery could leave medical issues unresolved." "In lieu of a 72 hour requirement, we suggest a rule under which the distant site provider, in collaboration with the patient site presenter, would determine if and when an in-person visit is necessary."

The Board has responded to this comment as described above in responses to Comments 1 - 4. In addition, in response to concerns about the 72-hour requirement, the 72-hour provision in subsection (e) pertains only to patients being treated at home with new symptoms unrelated to the preexisting conditions they are being treated for via telemedicine. If a patient's symptoms resolve within 72 hours then an in-person visit is not required. Because this provision only pertains to patients receiving treatment at home, or somewhere besides an established medical site, there would likely be no patient site presenter available to confer with the distant site provider to determine whether the patient needs an in-person visit. For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

COMMENT NO. 6

State Representative Eddie Rodriguez commented that the 72-hour requirement would limit access to health care to those in rural and urban areas.

The Board disagrees with this comment as stated in its response to Comment 5. For these reasons, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

COMMENT NO. 7: Texas Conservative Coalition Research Institute

The commenter commented that the provisions of §174.7 could limit telemedicine practice especially in rural areas.

First, the commenter questions the basis for the "face-to-face visit" requirement of subsection (a)(1). The commenter states that if the Board's concern is that a patient might be misdiagnosed via telemedicine, there is no evidence that a face-to-face visit will completely eliminate that possibility, since the vast majority of preventable medical errors occur under direct physician supervision. The commenter further challenges the Rule's presumption that "face-to-face visits" are superior to the other types of patient encounters that can be achieved via telemedicine.

The commenter also states that requiring patients to see a physician for a face-to-face visit within 72 hours of the telemedicine encounter places (1) creates an "arbitrary time frame" that places an additional burden on rural communities that are currently faced with a shortage of primary care physician; (2) could potentially put physicians in harm's way; and (3) regulates patient behaviors in an unwarranted fashion. The commenter suggests waiving the 72 hour requirement in rural areas.

In addition, the commenter disagrees with the wording of subsection (c) which requires that "all patients must be seen by a physician for an in-person evaluation at least once a year", stating that it (1) conflicts with the requirement of a face-to-face visit within 72 hours; (2) increases costs for employers, individuals and the state; and (3) could create a basis for disciplinary action against a physician if a patient fails to schedule an appointment within a year. The commenter also asks whether the proposed rule (1) means that a patient must see a doctor once a

year in perpetuity; (2) would allow a patient to see any licensed physician; and (3) would require the in-person evaluation with the doctor that authorized the telemedicine service. In addition, the commenter asks whether the word "physician" means a Primary Care Physician (PCP).

The Board disagrees with this comment as discussed in its above responses. In addition, the Board rule does not disallow providing care without an in-person examination for all telemedicine encounters, it merely requires that if telemedicine services are provided at sites other than established medical sites, then an in-person evaluation is required. Further, the distant site providers are not required to have patients seen annually by a physician, but may not continue to treat a patient who has not received an in-person annual evaluation by a physician who is appropriately trained to evaluate a patient's medical condition based on the patient's medical history and current treatment.

COMMENT NO. 8: Texas Medical Association

The commenter asked whether, in subsection (b), patient site presenters are required for all other visits?

The commenter also suggested that the phrase "medical practice site" in subsection (d) be changed to "established medical site" in order to maintain consistency with the definition section of the rule.

The Board has determined that patient site presenters are not required for other visits, and will address this issue on its website related for Telemedicine FAQs and amend the language in the future to clarify the rule. The Board agrees with the comment on subsection (d) and that a nonsubstantive change is to be made to reference "established medical site."

COMMENT NO. 9: Teladoc Medical Services

The commenter objects to the requirement of an in-person physical examination of the patient at a site other than an established medical site, stating that there are many other generally accepted means that telemedicine physicians can use to provide medical services that meet the standard of care, including (a) use of medical or health records; (b) question and answers between the patient and physician using the interactive media to establish medical condition of the patient, and (c) use of lab tests.

This commenter also states that this section does not recognize the latest proposed Interim Final Rule promulgated by the US DOJ concerning the Ryan Haight Online Pharmacy Consumer Protection Act at US Federal Register 15596 et seq., in which DOJ allowed telemedicine providers to prescribe controlled substances without an in-person examination.

Finally, this commenter objects to subsection (d), stating that it fails to recognize the valuable and cost-saving service telemedicine provides for the treatment of chronic conditions.

The Board disagrees with these comments as addressed in its responses to comments 1 - 7. In addition, state law may be more restrictive than federal law and again the Board rule does not disallow prescribing medication without an in-person examination, it merely requires that if telemedicine services are provided at sites other than established medical sites, then an in-person evaluation is required.

COMMENT NO. 10: Texas Health and Human Services Commission

The commenter expressed concern that subsection (e) was vague and subject to misinterpretation. He also made numerous grammatical suggestions. The Board agreed with these comments and made changes to the rule as proposed.

COMMENT NO. 11: Texas Association of Business

The commenter objects to subsection (e), stating that it appears on its face to create obstacles to receiving treatment via telemedicine if a patient cannot get an in-person appointment with a physician within 72 hours, and thus severely limits physicians' ability to offer needed access to telemedicine services in rural areas.

The Board disagrees with this comment as discussed in its responses to comments 1 - 5.

COMMENT NO. 12: Texas Public Policy Foundation and Representative Warren Chisum

The commenters oppose subsection (e), stating that requiring a patient who receives a telemedicine consultation to see a physician in person within 72 hours would place additional burdens on areas and families already struggling to access health care, and would cripple the potential benefits of telemedicine. They state this is especially significant in view of additional strains on health care resources that will occur as a result of the newly enacted federal health care law. They state that this Subsection would also send a signal that free-market medical innovation is discouraged.

Representative Chisum also stated that this subsection is not needed because "doctors have the ability to request an in-person visit with the patient should their medical training deem it necessary", and that "superseding their medical judgment by rule is unnecessary and intrusive".

The Board disagrees with this comment as discussed in its responses above.

COMMENT NO. 13: Representative Jim Jackson

The commenter proposed deleting the requirement of subsection (a)(1) that would require an in-person examination for the treatment of all medical conditions prior to a telemedicine consultation via video webcam. He also stated that if this is not possible, he would recommend making an exception to the proposed rule amendments so that minor non-emergency medical conditions can be treated via live, interactive web-based video conferencing so long as appropriate clinical standards and QA protocols are met.

The Board disagrees with this comment as discussed in its responses above. As a final response to the comments on this section, the Texas Medical Board believes that the rules development process is a dynamic one that requires constant feedback from stakeholders for needed updates and changes. The Board's acknowledges that there will need to be continuous revisions of Chapter 174 to meet the changing needs of technology in medical practice. The Board does not want to unreasonable limit the use of telemedicine, instead the Board wants to ensure that the regulation of telemedicine is fair, responsible, and provides the appropriate balance between access to health care and patient safety. This is in keeping with our mission to safeguard the citizens of Texas through professional accountability of our licensees.

§174.8

The Board received comments regarding §174.8 from Teladoc Medical Services and Texas Health and Human Services Commission.

COMMENT ONE: Teladoc Medical Services

The commenter objects to subsection (a)(4) as overly restrictive, claiming that its requirement that the telemedicine physician "ensure the availability of the distant site provider or coverage of the patient for appropriate follow-up care" may not be necessary for the patient's condition, and that follow-up care may be provided by the telemedicine physician.

The Board disagrees with this comment. The telemedicine physician is the distant site provider and therefore it is appropriate to require that provider or someone else who provides coverage to be available for follow-up care. In addition this rule is consistent and mirrors the language of 22 TAC §190.8(1)(L) that was adopted in 2003 and defined practice inconsistent with public health and welfare as the prescribing of any dangerous drug or controlled substance without first establishing a proper professional relationship with a patient to include appropriate follow-up care. This section therefore is adopted without changes except for those changes made in response to Comment 2.

COMMENT TWO: Texas Health and Human Services Commission

The commenter made numerous grammatical suggestions. The Board agreed with the suggestions and made the corrections to the rule.

§174.9

The Board received comments regarding §174.9 from Senator Carlos Uresti.

COMMENT NO. 1

Sen. Carlos Uresti commented that the propose rules will "eliminate the ability of primary care physicians to use video conferencing to provide telemedicine services to Texas patients". The Board disagrees with this comment. Section 174.9 provides that advanced communication technology must be used for telemedicine encounters. Stakeholders who worked on this rule commented that the term "advanced communication technology" should not be further defined, as technology by its very nature keeps changing. The Board does interpret "advanced communication technology" to include web-based video conferencing, however. For this reason, the Board does not believe that any changes should be made to this proposed rule as published. The Board has adopted the amendments to this section as published, without changes.

§174.11

The Board received comments regarding §174.11 from Teladoc Medical Services and Texas Health and Human Services Commission.

COMMENT ONE: Teladoc Medical Services

The commenter recommends that this section be deleted because it is outside the scope of telemedicine.

The Board disagrees with this comment. The rule relates to telemedicine and the practice of medicine that are both within the scope of the authority of the Board to regulate. The Board therefore adopts the proposed language without amendment except as provided below.

COMMENT TWO: Texas Health and Human Services Commission

The commenter asks whether the term "current patients" refers to a physician's "active" patients.

The Board agrees that clarification is needed and therefore amended the language.

22 TAC §§174.1, 174.3, 174.5, 174.6, 174.8, 174.10, 174.12

The amendments and new rules are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

§174.6. Telemedicine Medical Services Provided at an Established Medical Site.

(a) Telemedicine medical services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a proper physician-patient relationship between a distant site provider and a patient.

(b) For new conditions, a patient site presenter must be reasonably available onsite at the established medical site to assist with the provision of care. It is at the discretion of the distant site physician if a patient site presenter is necessary for follow-up evaluation or treatment of a previously diagnosed condition.

(1) A distant site provider may delegate tasks and activities to a patient site presenter during a patient encounter.

(2) A distant site provider delegating tasks to a patient site presenter shall ensure that the patient site presenter to whom delegation is made is properly supervised.

(c) If the only services provided are related to mental health, a patient site presenter is not required except in cases where the patient may be a danger to themselves or others.

§174.8. Evaluation and Treatment of the Patient.

(a) Evaluation of the Patient. Distant site providers who utilize telemedicine medical services must ensure that a proper physician-patient relationship is established which at a minimum includes:

(1) establishing that the person requesting the treatment is in fact whom he/she claims to be;

(2) establishing a diagnosis through the use of acceptable medical practices, including patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, or both, to treatment recommended or provided;

(3) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(4) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.

(b) Treatment. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional in-person clinical settings.

(c) An online or telephonic evaluation solely by questionnaire does not constitute an acceptable standard of care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 27, 2010.

TRD-201005572
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: October 17, 2010
Proposal publication date: April 30, 2010
For further information, please call: (512) 861-5390

♦ ♦ ♦

22 TAC §174.4, §174.6

The repeals are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 27, 2010.

TRD-201005573
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: October 17, 2010
Proposal publication date: April 30, 2010
For further information, please call: (512) 861-5390

♦ ♦ ♦

22 TAC §§174.2, 174.7, 174.9, 174.11

The amendment and new rules are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Board to adopt rules and bylaws as necessary to govern its own proceedings, perform its duties, regulate the practice of medicine in this state, enforce this subtitle, and establish rules related to licensure.

§174.7. Telemedicine Medical Services Provided at Sites other than an Established Medical Site.

(a) A distant site provider who provides telemedicine medical services at a site other than an established medical site for a patient's previously diagnosed condition must either:

(1) see the patient one time in a face-to-face visit before providing telemedicine medical care; or

(2) see the patient without an initial face-face to visit, provided the patient has received an in-person evaluation by another physician who has referred the patient for additional care and the referral is documented in the medical record.

(b) Patient site presenters are not required for pre-existing conditions previously diagnosed by a physician through a face-to-face visit.

(c) All patients must be seen by a physician for an in-person evaluation at least once a year.

(d) Telemedicine medical services may not be used to treat chronic pain with scheduled drugs at sites other than medical practice sites.

(e) A distant site provider may treat an established patient's new symptoms which are unrelated to a patient's preexisting condition provided that the patient is advised to see a physician in a face-to-face visit within 72 hours. A distant site provider may not provide continuing telemedicine medical services for these new symptoms to a patient who is not seen within 72 hours. If a patient's symptoms are resolved within 72 hours, such that continuing treatment for the acute symptoms is not necessary, then a follow-up face-to-face visit is not required.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 27, 2010.

TRD-201005574
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: October 17, 2010
Proposal publication date: July 16, 2010
For further information, please call: (512) 861-5390

♦ ♦ ♦

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.11

The Texas Funeral Service Commission (commission) adopts an amendment to §201.11, Disciplinary Guidelines, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6428).

The amendment is adopted in accordance with House Bill 1468 adding Texas Health and Safety Code, Chapter 695 to ensure the commission the authority to administer administrative actions and or penalties.

The commission received no comments on the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2010.

TRD-201005444
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: October 10, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 936-2469

♦ ♦ ♦

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.14

The Texas Funeral Service Commission (commission) adopts an amendment to §203.14, Display of Funeral Merchandise, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6428).

The amendment is adopted to allow a variety of merchandise selections for the consumer.

The commission received no comments on the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.12. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2010.

TRD-201005448
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: October 10, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 936-2469

♦ ♦ ♦

22 TAC §203.24

The Texas Funeral Service Commission (commission) adopts an amendment to §203.24, Unprofessional Conduct, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6429).

The amendment is adopted to allow the commission to take administrative action against the person violating any Texas Law, or Administrative Rules regarding cremation laws.

The commission received no comments on the proposed amendment.

The amendment is adopted under Texas Occupations Code, §651.12. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2010.

TRD-201005451
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: October 10, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 936-2469

♦ ♦ ♦

22 TAC §203.29

The Texas Funeral Service Commission (Commission) adopts an amendment to §203.29, Funeral Establishment Names, with changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6429).

The amendment is adopted to give affected persons notice of the process the commission follows in the regulation and compliance with regard to advertising in order to comply with the rulemaking requirements imposed by Texas Occupations Code §651.202.

Following are the public comments received and corresponding commission response:

Comment: The Commission received comments from Steve Martin, Texas Funeral Directors Association President; he wrote a letter opposing the rule as written and offered amendments. He stated that the Texas Funeral Directors Association (TFDA) believes that the additional advertisement requirements can be made clearer to the consumer and less burdensome to the funeral director by requiring only the TFSC license number; by adding a one year grace period; by preceding the license number with TFSC #; and by striking commercial embalming establishments.

Mr. Martin requested the commission change language to §203.29(f) and (g) as follows:

(f) No funeral establishment, crematory commercial embalming establishment, or cemetery shall advertise in a manner which is false, misleading, or deceptive. After November 15, 2011, each advertisement that offers the service of an commercial embalming establishment, a funeral establishment, crematory, or cemetery in Texas and is found in a telephone directory, on a radio, on a television, on a domain site, e-mail directory, web site, or newspaper must clearly display the funeral establishment, commercial embalming establishment, cemetery, or crematory license number on all advertisements. The license number shall be preceded with "TFSC #".

(g) No licensed entity shall directly advertise after November 15, 2011 on a web site, telephone directory, domain site, on a radio, on a television, e-mail directory, or newspaper with an establishment name without the establishment name and license number clearly listed. The license number shall be preceded with "TFSC #".

Commission Response: The commission agrees with §203.29(f) striking commercial embalming establishment, adding after November 15, 2011, and the license number shall be preceded

with the TFSC License #. The commission disagrees with striking on all advertisements. The commission also disagrees with adding the license number shall be preceded with TFSC #. The commission believes the license number shall be preceded with TFSC License #. No funeral establishment, commercial embalming establishment, crematory, or cemetery shall advertise in a manner which is false, misleading, or deceptive. After November 15, 2011, each advertisement that offers the service of an commercial embalming establishment, a funeral establishment, crematory, or cemetery in Texas and is found in a telephone directory, on a radio, on a television, on a domain site, e-mail directory, web site, or newspaper must clearly display the funeral crematory license number on all advertisements. The license number shall be preceded with TFSC License #.

The commission agrees with §203.29(g) adding after November 15, 2011, and the license number shall be preceded with TFSC License #. No license entity shall directly advertise after November 15, 2011 on a web site, telephone directory, domain site, on a radio, on a television, e-mail directory, or newspaper with an establishment name without the establishment name and license number clearly listed. The license number shall be preceded with TFSC License #.

The commission appreciates comments submitted by TFDA and staff.

This amendment is adopted under Texas Occupations Code, §651.12. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

§203.29. Funeral Establishment Names.

(a) Each funeral establishment's application for licensure shall contain the name to be used on the license.

(b) Upon receiving an application for a new or changed funeral establishment license, the executive director shall review establishment names in the commission's database. The executive director shall issue the license in the requested name when all licensing requirements are satisfied, unless the director determines that the name is deceptively or substantially similar to the name of another licensed funeral establishment in the same county, metropolitan area, municipality, or service area. A license shall not be issued to an establishment for a name that is deceptively or substantially similar to the name of another establishment, unless that establishment agrees in writing to the name's use.

(c) A funeral establishment's name may be changed by following the procedure for obtaining the original name.

(d) An applicant for approval of a new or changed name may appeal the executive director's denial of the request to the commission. The commission's decision is final.

(e) No funeral establishment may advertise under an assumed name, unless the entity has filed an assumed name certificate with the appropriate county clerk or the secretary of state, as required by the Texas Assumed Business or Professional Name Act.

(f) No funeral establishment, commercial embalming establishment, crematory, or cemetery shall advertise in a manner which is false, misleading, or deceptive. After November 15, 2011, each advertisement that offers the service of an commercial embalming establishment, funeral establishment, crematory, or cemetery in Texas and is found in a telephone directory, on a radio, on a television, on a domain site, e-mail directory, web site, or newspaper must clearly display the funeral establishment, commercial embalming establishment, cemetery, or crematory license number on all advertisements. The license number shall be preceded with the TFSC License #.

(g) No licensed entity shall directly advertise after November 15, 2011 on a web site, telephone directory, domain site, on a radio, on a television, e-mail directory, or newspaper with an establishment name without the establishment name and license number clearly listed. The license number shall be preceded with the TFSC License #.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2010.

TRD-201005453
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: October 10, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 936-2469

♦ ♦ ♦

22 TAC §203.41

The Texas Funeral Service Commission adopts new §203.41, In-Casket Identification, without changes to the proposed text as published in the April 9, 2010, issue of the *Texas Register* (35 TexReg 2833).

The new section is adopted to ensure identification of each deceased person is included in the casket.

The commission received no comments on the proposed new section.

The new section is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2010.

TRD-201005452
O. C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: October 10, 2010
Proposal publication date: April 9, 2010
For further information, please call: (512) 936-2469

♦ ♦ ♦

PART 11. TEXAS BOARD OF NURSING

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.6, §217.9

INTRODUCTION. The Texas Board of Nursing (Board) adopts amendments to §217.6 (relating to Failure to Renew License) and §217.9 (relating to Inactive Status) without changes to the

proposed text published in the August 20, 2010, issue of the *Texas Register* (35 TexReg 7176) and will not be republished.

REASONED JUSTIFICATION. The adopted amendments are authorized under the Occupations Code §§53.021(b), 301.261, 301.301, 301.302, 301.303, 301.4535, and 301.151 and are necessary to: (i) clarify the existing requirements that apply to the reactivation of an expired (delinquent) or inactive nursing license; (ii) specify the new requirements that will apply to the reactivation of an expired (delinquent) or inactive nursing license; (iii) provide additional guidance regarding the content requirements of a refresher course, extensive orientation to the practice of nursing, and nursing program of study (refresher course); (iv) ensure consistency among the requirements of §217.6 and §217.9, as appropriate; and (v) prevent individuals with serious and potentially disqualifying histories from renewing expired (delinquent) licenses until the Board has had a full opportunity to investigate and take appropriate action.

Background

At its October, 2008, meeting, the Board considered a license reinstatement request from an individual who had been away from patient care for approximately 18 years. The individual requested: (i) a temporary permit in order to complete a competency evaluation; (ii) a limited license; or (iii) permission to retake the National Counsel Licensure Examination (NCLEX). The Board denied all of the individual's requests due to the extensive amount of time that the nurse had been away from patient care. At that time, the Board also charged Board staff with reviewing its authority under the Occupations Code §301.301 and developing a rule that addressed situations beyond which an expired (delinquent) license could not be renewed.

Board Staff presented its findings and recommendations to the Board at its January, 2009, meeting. Board Staff also presented the results of a survey from 23 other state boards of nursing, including Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Kansas, Michigan, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Vermont, Washington, DC, and West Virginia, regarding their treatment of the renewal of an expired license. Although there was no uniform standard among the surveyed states, 16 of the 23 states surveyed required the completion of a re-entry program or a comprehensive refresher course after a nursing license had been expired for a certain period of time. The majority of these states required a nursing license to have been expired for at least a five year period. These states included Arkansas, Connecticut, Delaware, Georgia, Hawaii, Kansas, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Vermont, Washington, DC, and West Virginia. Further, 5 of the 23 states required a nurse to complete formal nursing re-education or to retake the NCLEX after a nursing license had been expired for a certain period of time. The majority of these states required a nursing license to have been expired for at least a five year period. These states included Connecticut, Georgia, Hawaii, Michigan, and Oklahoma. After its consideration of this information, the Board determined that additional information was still needed and charged the Advisory Committee on Education and the Nursing Practice Advisory Committee (Committees) with the development of a rule related to failing to renew a license after a significant passage of time.

The Committees first convened via teleconference on June 4, 2009, to consider the Board's charge. The Committees discussed concerns related to a nurse's return to active nursing practice after being away for an extended period of time. The Committees also reviewed the Occupations Code §301.301(d), which authorizes the Board to set a length of time beyond which an expired license may not be renewed and to establish additional requirements that apply to the renewal of a license that has been expired for more than one year, but less than the time limit set by the Board beyond which a license may not be renewed. The Committees also considered the results from the Board's survey of other state boards of nursing regarding their treatment of the renewal of an expired license. The Committees discussed the Board's existing requirements related to refresher courses and whether those requirements sufficiently ensured a nurse's competency to re-enter active nursing practice. Several committee members suggested strengthening the Board's refresher course requirements in order to better ensure public safety upon a nurse's re-entry to active nursing practice. Some committee members suggested requiring nurses to demonstrate their knowledge in combination with an exam in order to establish their competency to practice upon re-entry. The Committees also discussed adding the Jurisprudence Exam to the Board's refresher course requirements. Some committee members advocated specialized refresher courses for individuals desiring to work in practice specific areas, such as pediatrics, case management, school nursing, or public health, while other committee members stressed the importance of more generalized refresher courses. The Committees also discussed whether formal nursing re-education should be required if a nurse had been away from active practice for a very lengthy period of time, such as ten or fifteen years. Following its discussions, however, the Committees were unable to reach any final recommendations regarding a nurse's failure to renew a license after a significant passage of time and determined that they needed to discuss the issues further.

The Committees re-convened on May 17, 2010, to again consider the Board's charge. Because there was general agreement at the June, 2009, meeting that the Board's refresher course requirements should be strengthened to better ensure a nurse's competency to re-enter active nursing practice after an extended period of time, the Committees focused their discussions on strengthening the Board's requirements for refresher courses. Specifically, the Committees discussed requiring all nurses seeking to re-enter active nursing practice to complete the Board's online Nursing Jurisprudence Prep Course, the Board's Jurisprudence and Ethics Workshop, or a Board approved Nursing Jurisprudence and Ethics Course, as well the Board's Nursing Jurisprudence Exam. The Committees felt that these additional requirements were necessary to test a nurse's competency to re-enter active nursing practice. The Committees also discussed recommendations related to the required course content of refresher courses, such as the amount of time that a nurse should spend reviewing and mastering each refresher course topic, as well as the kinds of issues that should be addressed during each phase of a refresher course. Committee members felt that additional Board guidance in this area would be helpful to nurses completing refresher courses, as well as to preceptors teaching refresher courses. Some committee members suggested that certain portions of the existing rules should be further clarified, and one committee member suggested that the language of §217.6 and §217.9 should be made more consistent. Following its discussions, the Committees voted to recommend amendments to §217.6 and §217.9 to the Board.

Expired (Delinquent) Licenses

The adopted amendments to §217.6 are necessary to clarify the existing requirements that apply to the reactivation of an expired (delinquent) nursing license and to specify the new requirements that will apply to the reactivation of an expired (delinquent) nursing license. Adopted §217.6 addresses three situations in which an expired (delinquent) nursing license may be reactivated: (i) first, where a nurse has failed to maintain a current Texas license for a period of less than four years; (ii) second, where a nurse has failed to maintain a nursing license from any licensing authority for four or more years; and (iii) third, where a nurse has failed to maintain a current Texas license for a period of four or more years, but has maintained a nursing license from another licensing authority and has practiced nursing during that time period.

Adopted §217.6(a) clarifies the existing requirements that apply to the reactivation of an expired (delinquent) nursing license where a nurse has failed to maintain a current Texas license for a period of less than four years, regardless of whether the nurse maintained a nursing license from another licensing authority or practiced nursing during that time period. In such situations, a nurse wishing to reactivate his or her license must file a reactivation application with the Board, pay the applicable licensure fees, including any fines and late fees, and provide evidence of having completed 20 contact hours of continuing education. Adopted §217.6(a) also clarifies that the continuing education hours must meet the requirements of Chapter 216 (relating to Continuing Competency).

Adopted §217.6(b) is necessary to address situations in which a nurse seeks to reactivate his or her nursing license after failing to maintain a current nursing license from any licensing authority, including Texas, for four or more years. Because the ever evolving landscape of medical care requires nurses to stay abreast of the most current changes in medical techniques, treatments, and technology, such situations raise questions about the nurse's competency to safely reenter nursing practice after being away from practice for an extended period of time. As a result, the Board has historically required such nurses to complete a refresher course before being able to reactivate his or her permanent Texas nursing license. While adopted §217.6(b) does not change this requirement, it does provide additional guidance to nurses completing refresher courses and to preceptors teaching refresher courses. Although the Board has established general parameters for refresher courses over time, individual refresher courses have historically varied from one another based upon a nurse's individual deficiencies, a preceptor's preferences, and the availability of clinical experiences. In an effort to ensure that a refresher course provides at least a minimally comprehensive review of nursing practice, the Board is adopting additional requirements for refresher courses. These requirements are designed to establish minimum standards for refresher courses without eliminating a preceptor's flexibility to customize certain portions of a refresher course to address a particular nurse's individual deficiencies. A nurse completing a refresher course under the adopted requirements should receive a more comprehensive review of nursing practice, as well as an opportunity to review and test his or her clinical skills.

First, the adopted requirements specify the recommended amount of time that a nurse and preceptor should spend on each required refresher course topic. For example, the Board recommends that 20% of a refresher course be spent on pharmacology review, while only 15% of a refresher course be spent on the review of the Nursing Practice Act, rules, and position statements. By identifying the amount of time that a nurse and preceptor should spend on each area, the adopted requirements prioritize the importance of each area of nursing practice, thereby creating a more uniform structure for refresher courses. Second, the adopted requirements specify the type of information that should be reviewed as part of each refresher course topic. For example, the adopted requirements specify several documents that should be reviewed as part of a *scope of practice* discussion, including documents and reference materials that are published on the Board's website. In this way, the adopted requirements are intended to strengthen the quality and value of refresher courses, which should enhance the competency of nurses completing the courses. Third, the adopted requirements specify that a nurse must provide documentation of his or her current cardiopulmonary resuscitation (CPR) certification prior to beginning any precepted clinical experience. Nurses are required to provide supervised, direct patient care as part of a refresher course. As such, this adopted requirement is necessary to ensure the safety of patients during a nurse's precepted clinical experiences.

In addition to the completion of a refresher course, adopted §217.6(b) continues to require the completion of a reactivation application, the submission of all applicable licensure fees, including any late fees or fines, and the completion of 20 contact hours of continuing education. Adopted §217.6(b) also clarifies that the continuing education hours must meet the requirements of Chapter 216.

Based upon the Committees' recommendations and the Board's own concerns regarding the safety and competency of nurses reentering nursing practice after being away for an extended period of time, adopted §217.6(b) also contains two additional requirements. These adopted requirements are intended to refresh and test a nurse's knowledge of acceptable nursing practices and procedures, which should better ensure the nurse's competency to reenter active nursing practice. First, adopted §217.6(b) requires a nurse seeking to reactivate his or her expired (delinquent) nursing license to complete one of the following courses: the online Board Jurisprudence Prep Course; the Board Jurisprudence and Ethics Workshop; or a Board approved Nursing Jurisprudence and Ethics course. Not only do these courses provide information related to the Nursing Practice Act and the Board's rules and regulations, but they also address patient safety and advocacy, scope of practice issues, systems issues, and safe harbor. The information contained in these courses is designed to support a nurse's transition back into active nursing practice. Adopted §217.6(b) also requires a nurse seeking to reactivate his or her expired (delinquent) nursing license to complete the Board's Nursing Jurisprudence Exam. This adopted requirement is important because it allows the Board to objectively measure a nurse's requisite nursing knowledge. Each of these adopted requirements is designed to test a nurse's competency upon reentry to practice.

Existing §217.6(b) requires a nurse seeking to reactivate his or her expired (delinquent) nursing license to apply for, and receive, a temporary permit in order to complete a refresher course. The adopted amendments do not alter this requirement. Under adopted §217.6(b), a nurse must still apply for, and receive, a temporary permit in order to complete a refresher course. Because a nurse must first apply for, and receive, a temporary permit before being permitted to complete a refresher course, the Board has historically placed the requirements and instructions for a refresher course in the same instruction and application packet as the temporary permit requirements and instructions. For purposes of internal organization and readabil-

ity, the instruction and application packets for both temporary permits and refresher courses are being adopted by reference in §217.6(c). Further, for purposes of clarity, these forms are designated as vocational nursing instruction and application packets and professional registered nursing instruction and application packets, as applicable.

Adopted §217.6(d) addresses situations in which a nurse: (i) has failed to maintain a current Texas nursing license for a period of four or more years; (ii) has practiced in another state during this period of time; and (iii) seeks to reactivate an expired (delinquent) license. Because a nurse seeking reactivation under adopted §217.6(d) has actively practiced nursing in another state during the preceding four year time period, there is less concern about the nurse's competency to reenter practice in Texas. Further, because a nurse seeking reactivation under adopted §217.6(d) will have maintained an active nursing license in another jurisdiction during the preceding four year time period, another state licensing board will have overseen the nurse's practice for that period of time, including monitoring and investigating any complaints that may have been filed against the nurse. Because the nurse's general competency to practice is of less concern in this situation, adopted §217.6(d) does not require the nurse to complete a comprehensive refresher course. However, the nurse still must be knowledgeable of issues that may be unique to Texas. As such, adopted §217.6(d) requires the nurse to complete the online Board Jurisprudence Prep Course, the Board Jurisprudence and Ethics Workshop, or a Board approved Nursing Jurisprudence and Ethics course and the Board Nursing Jurisprudence Exam. These courses are designed to familiarize the nurse with issues that he or she may encounter in his or her practice in Texas and should supplement and enhance the nurse's existing knowledge and skill set. Further, the Board Nursing Jurisprudence Exam is designed to objectively measure the nurse's competency to practice in Texas. Additionally, adopted §217.6(d) requires the nurse to complete a reactivation application, pay the applicable licensure fees, including any fines or late fees, and submit evidence of the completion of 20 contact hours of acceptable continuing education that meets the requirements of Chapter 216.

The remaining adopted amendments to §217.6 are necessary to re-designate the existing subsections of §217.6 and to increase the overall organization and readability of the section. Adopted §217.6(e) - (h) specify the situations in which a license reactivation application may be refused by the Board, a nurse's options after being refused a license reactivation, and special reactivation provisions applicable to actively deployed nurses. Each of the provisions in adopted §217.6(e) - (h), however, already exist within the current text of §217.6. The Board is not substantively altering or eliminating any of these existing requirements or procedures. Further, the mere rearrangement of these provisions within the section will not alter the Board's historical interpretation or application of these provisions or affect the Board's interpretation or application of these requirements in the future.

Adopted §217.6(i) is necessary to prevent individuals with serious and potentially disqualifying histories from renewing expired (delinquent) licenses and practicing nursing in Texas while the Board investigates and initiates actions against their licenses. This adopted subsection applies only in situations where a statute, such as the Occupations Code §301.4535(a) and §53.021(b), requires the revocation or denial of a license or renewal, or where the Board's policies would normally dictate the revocation or denial of a license or renewal. For example, the Occupations Code §301.4535(a) specifies certain criminal offenses for which the Board is required to suspend, refuse to renew, refuse to issue, or revoke a nursing license. Further, the Occupations Code §53.021(b) requires the Board to revoke a nurse's license following the nurse's imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Additionally, the Board is a member of the Nurse Licensure Compact (Compact), which is authorized by the Occupations Code Chapter 304. As part of the Compact, the Board shares disciplinary information concerning Texas licensees with other compact members. Further, when a disciplinary action is taken against a licensee by another compact state, the Board is notified. In this way, the various compact states work together to ensure that unsafe, incompetent, or dangerous licensees are monitored and appropriately disciplined, regardless of the state in which they choose to practice. Further, when the Board is notified that a nurse has been disciplined in another compact state, the Board begins its investigation of the matter and, if appropriate, seeks a similar action against the nurse's license or privilege in Texas.

Adopted §217.6(i) prevents nurses from being able to renew an expired (delinquent) license under certain circumstances. First, the nurse's license must have been expired (delinquent) for at least a one year period. Second, the nurse must fall into one of the following three categories: (i) the nurse must been initially or finally convicted of, or have entered a plea of guilty or nolo contendere to, an offense specified in the Occupations Code §301.4535(a); (ii) the nurse must have been imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision; or (iii) the nurse must have had a nursing license or privilege in another state revoked, suspended, or denied. If a nurse falls into one of these three categories and seeks to renew a Texas nursing license that has been expired (delinquent) for at least one year, adopted §217.6(i) will prevent the nurse from being able to renew the license until the Board has had an opportunity to complete its investigation and reach a final resolution of the matter. Currently, a nurse who falls into one of the aforementioned categories may seek the renewal of an expired (delinquent) license, regardless of whether the Board is simultaneously conducting an investigation of the matter. The nurse may then practice under the renewed license while the Board continues its investigation. As a result, nurses who have plead guilty to murder, indecency with a child, or aggravated sexual assault, for example, could continue unmonitored, daily contact with patients until the Board is able to complete its own investigation and disciplinary proceedings against the nurse. Likewise, a nurse whose license was revoked or suspended in another state may also seek to renew his or her Texas nursing license while the Board conducts an investigation of the matter. Again, the nurse may practice under the renewed license and have unmonitored, daily contact with patients until the Board is able to complete its own investigation and disciplinary proceedings against the nurse. This period of unsupervised and unmonitored practice poses a direct risk to the public health, safety, and welfare. Adopted §217.6(i) seeks to minimize this risk by preventing these nurses from practicing in Texas until the Board is able to determine if the nurse is safe and competent to practice, and, if so, whether the nurse's practice should be monitored by the Board. Once the Board concludes its investigation and is able to completely resolve the matter, the nurse may then renew the expired (delinquent) license and comply with the terms prescribed by the Board, as applicable.

Inactive Licenses

The adopted amendments to §217.9 are necessary to clarify the existing requirements that apply to the reactivation of an inactive nursing license; to specify the new requirements that will apply to the reactivation of an inactive nursing license; and to promote consistency between §217.6 and §217.9. Adopted §217.9 addresses three situations in which an inactive nursing license may be reactivated: (i) first, where a nurse has not practiced nursing in Texas and his or her license has been in an inactive status for a period of less than four years; (ii) second, where a nurse has not practiced nursing in any jurisdiction and his or her license has been in an inactive status for four or more years; and (iii) third, where a nurse's license has been in an inactive status for a period of four or more years, but the nurse has maintained a nursing license from another jurisdiction and has practiced nursing during that time period. Because these circumstances closely resemble the circumstances outlined in adopted §217.6(a), (b), and (d), the adopted amendments to §217.9(e), (f), and (h) mirror the requirements in adopted §217.6(a), (b), and (d). Consistency among these two sections promotes a fair and balanced process for all nurses seeking reactivation of an expired (delinquent) or inactive nursing license and ensures that all similarly situated individuals are treated equally by the Board.

Adopted §217.9(e) clarifies the existing requirements that apply to the reactivation of an inactive nursing license where a nurse has not practiced nursing in Texas and his or her license has been in an inactive status for a period of less than four years, regardless of whether the nurse has practiced in another jurisdiction during that time period. In such situations, a nurse wishing to reactivate his or her license must file a reactivation application with the Board, pay the applicable fees, and submit verification of the completion of 20 contact hours of continuing education. Adopted §217.9(e) also clarifies that the continuing education hours must meet the requirements of Chapter 216 and must have been completed within the two years immediately preceding the reactivation application. These adopted amendments are consistent with the adopted amendments to §217.6(a).

Adopted §217.9(f) prescribes the requirements that apply to the reactivation of an inactive nursing license where a nurse's license has been in an inactive status for four or more years and the nurse has not practiced nursing in any jurisdiction during that time period. When a nurse who has not actively practiced nursing for four years or more seeks to reactivate his or her license, concerns arise regarding the nurse's competency to practice. This is true, regardless of whether the nurse chose to place his or her license in an inactive status or whether the nurse failed to maintain a current license. As a result, the adopted amendments to §217.9(f) closely mirror the adopted amendments to §217.6(b). Adopted §217.9(f) requires a nurse whose license has been in an inactive status for four or more years, but who has not practiced nursing during that time, to complete a refresher course. This is not a departure from current Board policy. However, adopted §217.9(f) does prescribe additional requirements for refresher courses. These additional requirements are the same requirements that are being adopted in §217.6(b). These requirements have been previously discussed in the foregoing paragraphs of this adoption order and apply equally to a refresher course under adopted §217.6(b) and adopted §217.9(f). In addition to the completion of a refresher course, adopted §217.9(f) continues to require the completion of a reactivation application, the submission of all applicable licensure fees, and the completion of 20 contact hours of continuing education. Adopted §217.9(f) also clarifies that the continuing education hours must meet the requirements of Chapter 216.

Like adopted §217.6(b), adopted §217.9(f) also contains two additional requirements. First, adopted §217.9(f) requires a nurse seeking to reactivate an inactive nursing license to complete one of the following courses: the online Board Jurisprudence Prep Course; the Board Jurisprudence and Ethics Workshop; or a Board approved Nursing Jurisprudence and Ethics course. Adopted §217.9(f) also requires a nurse seeking to reactivate an inactive nursing license to complete the Board's Nursing Jurisprudence Exam. These adopted requirements have also been previously discussed in the foregoing paragraphs of this adoption order and are consistent with the adopted amendments to §217.6(b).

The Board has historically required a nurse seeking to reactivate an inactive nursing license to apply for, and receive, a temporary permit in order to complete a refresher course. The adopted amendments do not alter this requirement. Historically, the Board has placed the requirements and instructions for a refresher course in the same instruction and application packet as the temporary permit requirements and instructions. The instruction and application packets for both temporary permits and refresher courses are being adopted by reference in §217.6(c) and §217.9(g). For purposes of consistency, these forms will be utilized by nurses seeking reactivation of an expired (delinquent) license under adopted §217.6(b) and reactivation of an inactive license under adopted §217.9(f). As noted previously in this adoption order, these forms are designated as vocational nursing instruction and application packets and professional registered nursing instruction and application packets, as applicable.

Adopted §217.9(h) addresses situations in which: (i) a nurse's license has been in inactive status for four years or more; (ii) the nurse seeks to reactivate the inactive license; and (iii) the nurse has maintained a license and has practiced in another jurisdiction during the preceding four years. Much like a nurse seeking reactivation under adopted §217.6(d), a nurse's general competency to practice is of less concern in this situation. As such, adopted §217.9(h) does not require a nurse in this situation to complete a refresher course. However, the nurse still needs to be knowledgeable of issues that may be unique to Texas. As such, adopted §217.9(h) requires the nurse to complete the online Board Jurisprudence Prep Course, the Board Jurisprudence and Ethics Workshop, or a Board approved Nursing Jurisprudence and Ethics course and the Board Nursing Jurisprudence Exam. These adopted requirements have been previously discussed in this adoption order and are consistent with the adopted amendments to §217.6(d). Additionally, adopted §217.9(h) requires a nurse to complete a reactivation application, pay the applicable licensure fees, and submit evidence of the completion of 20 contact hours of acceptable continuing education that meet the requirements of Chapter 216. These adopted requirements are also consistent with the adopted amendments to §217.6(d).

HOW THE SECTIONS WILL FUNCTION.

Adopted §217.6(a) provides that a nurse who is not practicing nursing in Texas and who fails to maintain a current Texas license for a period of time less than four years may bring his or her license up-to-date by filing such forms as the Board may require, showing evidence of having completed 20 contact hours of acceptable continuing education that meets the requirements of Chapter 216 (relating to Continuing Competency) within the two years immediately preceding the application for reactivation, and

paying the current licensure fee plus a late fee and any applicable fines, which are not refundable.

Adopted §217.6(b) provides that a nurse who is not practicing nursing and who fails to maintain a current license from any licensing authority for four or more years will be required to: (i) complete a refresher course, extensive orientation to the practice of nursing, or a nursing program of study that meets the requirements prescribed by the Board. The applicant must submit an application to the Board for a temporary permit for the limited purpose of completing a refresher course, extensive orientation to the practice of nursing, or a nursing program of study; (ii) submit to the Board evidence of the successful completion of the requirements of §217.6(b)(1); (iii) submit to the Board a course completion form from the online Texas Board of Nursing Jurisprudence Prep Course, the Texas Board of Nursing Jurisprudence and Ethics Workshop, or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course; (iv) submit to the Board a certificate of completion from the Texas Nursing Jurisprudence Exam; (v) submit to the Board a completed reactivation application; (vi) submit to the Board the current, non-refundable licensure fee, plus a late fee and any applicable fines which are not refundable; and (vii) submit to the Board evidence of completion of 20 contact hours of acceptable continuing education for the two years immediately preceding the application for reactivation that meets the requirements of Chapter 216.

Adopted §217.6(c) adopts by reference the following forms, which comprise the instructions and requirements for a refresher course, extensive orientation to the practice of nursing, and a nursing program of study required by §217.6, and which are available at http://www.bon.state.tx.us/olv/forms.html: (i) Application for Six Month Temporary Permit (RN); and (ii) Application for Six Month Temporary Permit (LVN).

Adopted §217.6(d) provides that a nurse who fails to maintain a current Texas license for four years or more and who is licensed and has practiced in another state during the previous four years preceding the application for reactivation in Texas must comply with the requirements of §217.6(b)(3) - (7).

Adopted §217.6(e) provides that the issuance of a license reactivation may be refused to an individual who fails to submit an application for reactivation or submits an application which is incomplete, does not show evidence that the person meets the requirements for reactivation, or is not accompanied by the correct fee(s).

Adopted §217.6(f) provides that the Board's refusal to reactivate a license for the reasons specified in §217.6(e) does not entitle an individual to a hearing at the State Office of Administrative Hearings.

Adopted §217.6(g) provides that an individual who is refused a license reactivation and who wishes to reactivate his or her license will be required to: (i) correctly complete the reactivation application; (ii) show evidence of meeting all the requirements for reactivation, including completion of 20 contact hours of continuing education that meets the requirements of Chapter 216; and (iii) submit payment of the correct, non-refundable reactivation fee as follows: (A) if the license has been delinquent less than 90 days, the required fee will equal the renewal fee plus one-half the examination fee (see §223.1, relating to Fees), plus any applicable fines; or (B) if the license has been delinquent for more than 90 days, the required fee will equal the renewal fee plus the full examination fee (see §223.1), plus any applicable fines.

Adopted §217.6(h) sets forth special reactivation provisions for actively deployed nurses. Adopted §217.6(h)(1) provides that, if a nurse's license lapses and becomes delinquent while serving in the military whenever the United States is engaged in active military operations against any foreign power, the license may be reactivated without penalty or payment of the late renewal fee(s) under the following conditions: (i) the license was active at the time of deployment; (ii) the application for reactivation is made while still in the armed services or no later than three months after discharge from active service or return to inactive military status; (iii) a copy of the military activation orders or other proof of active military service accompanies the application; (iv) the renewal fee is paid; and (v) if the required continuing education contact hours were not earned for reactivation during the earning period, the nurse shall be required to complete the required continuing education hours needed for reactivation no later than three months after discharge from active service, return to inactive military status, or return to the United States from an active war zone. Adopted §217.6(h)(1) provides that the continuing education contact hours used for reactivation may not be used for the next license renewal. Adopted §217.6(h)(3) provides that the continuing education contact hours for the next license renewal following reactivation may not be prorated.

Adopted §217.6(i) provides that a nurse whose license has been expired for more than one year and who has been initially or finally convicted of, or has entered a plea of guilty or nolo contendere for, an offense specified in the Occupations Code §301.4535(a); surrendered a license or a privilege in another state or had a license or privilege revoked, suspended, or denied in another state; or been imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision may not renew the license until the Board has completed an investigation and reached a final resolution of the matter.

Adopted §217.9(a) provides that a nurse who elects to change from active licensure status to inactive status must submit a written request to the Board prior to the expiration of his or her license or designate "inactive" on the renewal form if at the time of renewal.

Adopted §217.9(e) provides that a nurse who has not practiced nursing in Texas and whose license has been in an inactive status for less than four years may reactivate the license by completing the reactivation application form, paying the required reactivation fee and the current licensure fee which are non-refundable, and submitting verification of completion of 20 contact hours of continuing education that meets the requirements of Chapter 216 (relating to Continuing Competency) within the two years immediately preceding the application for reactivation.

Adopted §217.9(f) provides that a nurse who has not practiced nursing and whose license has been in an inactive status for four or more years must submit to the Board: (i) a completed reactivation application; (ii) verification of completion of a refresher course, extensive orientation to the practice of nursing, or a nursing program of study that meets the requirements prescribed by the Board. The nurse must submit an application to the Board for a temporary permit for the limited purpose of completing a refresher course, extensive orientation to the practice of nursing, or a nursing program of study; (iii) evidence of completion of 20 contact hours of acceptable continuing education for the two years immediately preceding the application for reactivation that meets the requirements of Chapter 216 of this title; (iv) a course completion form from the online Texas Board of Nurs-

ing Jurisprudence Prep Course, the Texas Board of Nursing Jurisprudence and Ethics Workshop, or a Texas Board of Nursing approved Nursing Jurisprudence and Ethics course; (v) a certificate of completion from the Texas Nursing Jurisprudence Exam; and (vi) the required reactivation fee, plus the current licensure fee, which are non-refundable.

Adopted §217.9(g) adopts by reference the following forms, which comprise the instructions and requirements for a refresher course, extensive orientation to the practice of nursing, and a nursing program of study required by this section, and which are available at http://www.bon.state.tx.us/olv/forms.html: (i) Application for Six Month Temporary Permit (RN); and (ii) Application for Six Month Temporary Permit (LVN).

Adopted §217.9(h) provides that a nurse whose license has been in an inactive status for four years or more and who is licensed and has practiced in another state during the previous four years preceding the application for reactivation in Texas must comply with the requirements of §217.9(f)(1) and (f)(3) - (6).

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Board did not receive any comments on the proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code §§53.021(b), 301.261, 301.301, 301.302, 301.303, 301.4535, and 301.151. Section 53.021(b) provides that a license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

Section 301.261(a) provides that the Board may place on inactive status the license of a person under Chapter 301 who is not actively engaged in the practice of professional nursing or vocational nursing if the person submits a written request to the Board in the form and manner determined by the Board. The inactive status begins on the expiration date of the person's license. Section 301.261(b) provides that the Board shall maintain a list of each person whose license is on inactive status. Section 301.261(c) provides that a person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work. Section 301.261(d) provides that the Board shall remove a person's license from inactive status if the person requests that the Board remove the person's license from inactive status; pays each appropriate fee; and meets the requirements determined by the Board. Section 301.261(e) provides that the Board by rule shall permit a person whose license is on inactive status and who is 65 years or older to use, as applicable, the title "Registered Nurse Retired," "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired."

Section 301.301(a) provides that the Board by rule may adopt a system under which licenses expire on various dates during the year. Section 301.301(b) provides that a person may renew an unexpired license issued under Chapter 301 on payment to the Board of the required renewal fee before the expiration date of the license, payment to the Board of any costs assessed under §301.461, and compliance with any other renewal requirements adopted by the Board. Further, a person whose license has expired may not engage in activities that require a license until the license has been renewed. Section 301.301(c) provides that a person whose license has been expired for 90 days or less may renew the license by paying to the Board the required renewal fee and a late fee in the amount considered appropriate by the Board to encourage timely renewal. Section 301.301(c-1) provides that a person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the Board all unpaid renewal fees and a late fee that is equal to twice the amount of a late fee under §301.301(c). Section 301.301(d) provides that the Board by rule shall set a length of time beyond which an expired license may not be renewed. Further, the Board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the Board beyond which a license may not be renewed. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. Section 301.301(e) provides that at least 30 days before the expiration of the person's license, the Board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the Board. Section 301.301(f) provides that a registered nurse who practices professional nursing or a vocational nurse who practices vocational nursing after the expiration of the nurse's license is an illegal practitioner whose license may be revoked or suspended.

Section 301.302(a) provides that a person who was licensed to practice professional nursing or vocational nursing in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application may obtain a new license without examination. Section 301.302(b) provides that the person must pay to the Board a fee that is equal to the amount of the initial fee for the license and the renewal fee.

Section 301.303(a) provides that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including completion of targeted continuing education programs and consideration of a license holder's professional portfolio, including certifications held by the license holder. Section 301.303(b) provides that the Board may not require participation in more than a total of 20 hours of continuing education in a two-year licensing period. Section 301.303(c) provides that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education. Section 301.303(e) provides that the Board may adopt other rules as necessary to implement §301.303. Section 301.303(f) provides that the Board may assess each program and provider under §301.303 a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers. Section 301.303(g) provides that the Board by rule may establish guidelines for targeted continuing education required under Chapter 301. The rules adopted under §301.303(g) must address: (i) the nurses who are required to complete the targeted continuing education program; (ii) the type of courses that satisfy the targeted continuing education requirement; (iii) the time in which a nurse is required to complete the targeted continuing education; (iv) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (v) any other requirement considered necessary by the Board.

Section 301.4535(a) requires the Board to suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of: (i) murder under §19.02, the Penal Code, capital murder under §19.03, Penal

Code, or manslaughter under §19.04, Penal Code; (ii) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony; (iii) sexual assault under §22.011, Penal Code; (iv) aggravated sexual assault under §22.021, Penal Code; (v) continuous sexual abuse of young child or children under §21.02, Penal Code, or indecency with a child under §21.11, Penal Code; (vi) aggravated assault under §22.02, Penal Code; (vii) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under §22.04, Penal Code; (viii) intentionally, knowingly, or recklessly abandoning or endangering a child under §22.041, Penal Code; (ix) aiding suicide under §22.08, Penal Code, and the offense was punished as a state jail felony; (x) an offense under §25.07, Penal Code, punished as a felony; (xi) an offense under §25.071, Penal Code, punished as a felony; (xii) an agreement to abduct a child from custody under §25.031, Penal Code; (xiii) the sale or purchase of a child under §25.08, Penal Code; (xiv) robbery under §29.02, Penal Code; (xv) aggravated robbery under §29.03, Penal Code; (xvi) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or (xvii) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in §301.4535(a). Section 301.4535(b) provides that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under §301.4535(a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the Board establishes by rule criteria that would permit the issuance or renewal of the license. Section 301.4535(b) provides that, on final conviction or a plea of guilty or nolo contendere for an offense listed in §301.4535(a), the Board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license. Section 301.4535(c) provides that a person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by §301.4535(a).

Section 301.151 provides that the Board may adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 21, 2010.

TRD-201005459
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: October 11, 2010
Proposal publication date: August 20, 2010
For further information, please call: (512) 305-6822

♦ ♦ ♦

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 375. CONDUCT AND SCOPE OF PRACTICE

22 TAC §375.1

The Texas State Board of Podiatric Medical Examiners adopts the amendments to §375.1, concerning Definitions, without changes to the proposed text as published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3394). The text will not be republished.

The amendments to §375.1 are adopted to remove the definition of foot which is currently found in paragraph (2). In regards to Case No. 08-0485 Texas Supreme Court - Texas State Board of Podiatric Medical Examiners, Texas Podiatric Medical Association (TPMA) and Bruce A. Scudday, DPM v. Texas Orthopedic Association, Texas Medical Association, and Andrew M. Kant, MD, on July 30, 2010 the Texas Supreme Court denied the Board's and TPMA's Petitions for Review thus upholding the May 23, 2008 Texas Third Court of Appeals Opinion invalidating the Definition of "Foot." On August 20, 2010 the Texas Third Court of Appeals issued the requisite "Mandate" finally invalidating the Definition of "Foot."

No comments were received in response to the proposed amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcements of the law regulating the practice of podiatry.

The adopted amendments to §375.1 implement Texas Occupations Code §202.001(a)(4).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005542
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: October 14, 2010
Proposal publication date: April 30, 2010
For further information, please call: (512) 305-7000

♦ ♦ ♦

CHAPTER 382. NON-CERTIFIED RADIOLOGIC TECHNICIANS

22 TAC §§382.1, 382.3, 382.5

The Texas State Board of Podiatric Medical Examiners adopts the amendments to §§382.1, 382.3, and 382.5, regarding Non-Certified Radiologic Technicians, without changes to the pro-

posed text as published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3394). The text will not be republished.

The amendments to §§382.1, 382.3, and 382.5 are adopted to update the proper name reference of the Texas Department of State Health Services and their statute and rule references.

No comments were received in response to the proposed amendments.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The adopted amendments to §§382,1, 382.3, and 382.5 implement Texas Occupations Code, Chapter 601 and 25 Texas Administrative Code, Part 1, Chapter 140.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005543
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: October 14, 2010
Proposal publication date: April 30, 2010
For further information, please call: (512) 305-7000

♦ ♦ ♦

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER D. RESPONSIBILITIES TO THE PUBLIC

22 TAC §501.81

The Texas State Board of Public Accountancy adopts an amendment to §501.81, concerning Firm License Requirements, with changes to the proposed text, published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6745) and will be republished. Rule changes can be found in subsection (a).

The amendment will put licensees on notice that when a firm license is reinstated the license is not retroactive to the date of the license expiration.

One (1) comment was received by the Board. The TSCPA commented on the proposed rule revision that states that a firm license when paid late has an effective date on the date it is paid and is not retroactive to the date it was due. The TSCPA expressed concern with the proposed rule because paying late is sometimes unavoidable or through no fault of the licensee or firm. The TSCPA points out that a license application or renewal could be lost in the mail through no fault of the licensee or the person in the firm responsible for the renewal could unavoidably become ill and unable to timely submit the license renewal. The TSCPA believes that these situations should not cause the firm to be considered operating outside the law during this period and adds that the firm is already penalized by a substantial late fee. The comment letter points out that the effect of non-licensure is that firms will be prohibited from issuing audit reports for the period they were not licensed and could be required to report the de facto suspension to other states and to the Public Company Accounting Oversight Board ("PCAOB"). In order to address these concerns, staff is recommending that the rule as proposed be revised to include language that would give the Board the authority to extend the expiration date on an individual or firm license if it can be shown that extenuating circumstances beyond the control of the individual or firm caused the application for licensure or renewal to be late. Staff proposes the following language be added to address extenuating circumstances and provides the Board with the ability to extend the expiration date of a license upon a showing of justifiable circumstances.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§501.81. Firm License Requirements.

(a) A Firm, may not provide or offer to provide attest services or use the title "CPA," "CPAs," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or any variation of those titles unless the firm holds a firm license issued by the board or qualifies under a practice privilege. A firm license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued. A firm license does not expire when the application for licensure is received by the Board prior to its expiration date. An expiration date for a firm license may be extended by the Board, in its sole discretion, upon a demonstration of extenuating circumstances that prevented the firm from timely applying for or renewing a firm license.

(b) A firm is required to hold a license issued by the board if the firm establishes or maintains an office in this state.

(c) A firm is required to hold a license issued by the board and an individual must practice through a firm that holds such a license, if for a client that has its principal office in this state, the individual performs:

(1) a financial statement audit or other engagement that is to be performed in accordance with the Statements on Auditing Standards;

(2) an examination of prospective financial information that is to be performed in accordance with the Statement on Standards of Attestation Engagements; or

(3) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor.

(d) Each advertisement or written promotional statement that refers to a CPA's designation and his or her association with an unlicensed entity in the client practice of public accountancy must include the disclaimer: "This firm is not a CPA firm." The disclaimer must be included in conspicuous proximity to the name of the unlicensed entity and be printed in type not less bold than that contained in the body of

the advertisement or written statement. If the advertisement is in audio format only, the disclaimer shall be clearly declared at the conclusion of each such presentation.

(e) The requirements of subsection (d) of this section do not apply with regard to a person performing services:

(1) as a licensed attorney at law of this state while in the practice of law or as an employee of a licensed attorney when acting within the scope of the attorney's practice of law;

(2) as an employee, officer, or director of a federally-insured depository institution, when lawfully acting within the scope of the legally permitted activities of the institution's trust department; or

(3) pursuant to a practice privilege.

(f) On the determination by the board that a person has practiced without a license or through an unlicensed firm in violation of subsection (d) of this section, the person's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

(g) Interpretive Comment: A person who is employed by an unlicensed firm that offers services that fall within the definitions of the client practice of public accountancy as defined in §501.52(8) and (21) of this title (relating to Definitions) and §901.003 of the Act (relating to Practice of Public Accountancy) must comply with the disclaimer requirement found in subsection (d) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005524
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 13, 2010
Proposal publication date: August 6, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

CHAPTER 513. REGISTRATION
SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.11

The Texas State Board of Public Accountancy adopts an amendment to §513.11, concerning Qualifications for Non-CPA Owners of Firm License Holders, with changes to the proposed text, published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6746) and will be republished. Rule changes can be found in subsection (a)(4).

The amendment will preclude a licensee that has been revoked or suspended from becoming a non-CPA owner in a CPA firm.

One (1) comment was received by the Board. TSCPA expressed concern that a suspended licensee would not be permitted to register as a non-CPA owner of a CPA firm even when the suspension is the result of failure to report CPE or some similar administrative non-compliance. The staff proposes to add language to distinguish between the Board's "administrative" disciplinary actions from the more significant discipline and believes this addresses the concern expressed in the written comment letter.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§513.11. Qualifications for Non-CPA Owners of Firm License Holders.

(a) A firm which includes non-CPA owners may not qualify for a firm license unless every non-CPA owner of the firm:

(1) is an individual;

(2) is actively providing personal services in the nature of management of some portion of the firm's business interests or performing services for clients of the firm or an affiliated entity;

(3) is of good moral character as demonstrated by a lack of history of dishonest or felonious acts; and

(4) is not a suspended or revoked licensee or certificate holder excluding those licensees that have been administratively suspended or revoked. (Administratively suspended or revoked are those actions against a licensee for Continuing Professional Education reporting deficiencies or failure to renew a license.)

(b) Each of the non-CPA owners who are residents of the State of Texas must also:

(1) pass an examination on the rules of professional conduct as determined by board rule;

(2) comply with the rules of professional conduct;

(3) maintain professional continuing education applicable to license holders including the Board approved ethics course as required by board rule;

(4) hold a baccalaureate or graduate degree conferred by a college or university within the meaning of §511.52 of this title (relating to Recognized Colleges and Universities) or equivalent education as determined by the board; and

(5) maintain any professional designation held by the individual in good standing with the appropriate organization or regulatory body that is identified or used in an advertisement, letterhead, business card, or other firm-related communication.

(c) A "Non-CPA Owner" includes any individual who has any financial interest in the firm or any voting rights in the firm.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005525
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 13, 2010
Proposal publication date: August 6, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

CHAPTER 515. LICENSES

22 TAC §515.1

The Texas State Board of Public Accountancy adopts an amendment to §515.1, concerning License, without changes to the proposed text as published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6747) and will not be republished.

The amendment will put licensees on notice that it is the licensee's responsibility to renew his or her individual and/or firm license and the license expires even if the licensee didn't receive the board's reminder of license renewal.

One (1) comment was received by the Board. TSCPA expressed concern with the proposed revision to Board Rules §515.1 and §515.3 which provides language stating that the individual and firm license holder is responsible for renewing the license before the expiration date of the license and failure to receive notice from the Board that the license is due to be renewed does not relieve the individual and firm license holder from the responsibility to renew the license. The language proposed to be added to §501.81 that would permit the Board to extend the individual or firm license upon a showing of extenuating circumstances addresses this concern and the staff believes that additional revision is unnecessary to proposed Board Rules §515.1 and §515.3.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005526
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 13, 2010
Proposal publication date: August 6, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

22 TAC §515.3

The Texas State Board of Public Accountancy adopts an amendment to §515.3, concerning License Renewals for Individuals and Firm Offices, without changes to the proposed text as published in the August 6, 2010, issue of the *Texas Register* (35 TexReg 6748) and will not be republished.

The amendment is to inform licensees of their responsibility to renew their individual and firm license.

One (1) comment was received by the Board. TSCPA expressed concern with the proposed revision to Board Rules §515.1 and §515.3 which provides language stating that the individual and firm license holder is responsible for renewing the license before the expiration date of the license and failure to receive notice from the Board that the license is due to be renewed does not relieve the individual and firm license holder from the responsibility to renew the license. The language proposed to be added to §501.81 that would permit the Board to extend the individual or firm license upon a showing of extenuating circumstances addresses this concern and the staff believes that additional revision is unnecessary to proposed Board Rules §515.1 and §515.3.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005527
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 13, 2010
Proposal publication date: August 6, 2010
For further information, please call: (512) 305-7842

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.80

The Comptroller of Public Accounts adopts the repeal of §3.80, concerning motor vehicles awarded as prizes, without changes to the proposed text as published in the April 2, 2010, issue of the *Texas Register* (35 TexReg 2725).

The existing section is being repealed so that the content can be updated in a new §3.80 to reflect changes pursuant to House Bill 2654, 81st Legislature, 2009, effective September 1, 2009.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code, §152.001(1) (concerning the definition of sale), §152.025(a) (concerning the ten dollar tax imposed on the gift of a motor vehicle), and §152.062(b) and (b-1) (concerning the notarized joint statement required for a gift transaction).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005519
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: October 13, 2010
Proposal publication date: April 2, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

34 TAC §3.80

The Comptroller of Public Accounts adopts new §3.80, concerning motor vehicles transferred as a gift or for no consideration, with changes to the proposed text as published in the April 2, 2010, issue of the *Texas Register* (35 TexReg 2725).

The new section replaces the existing §3.80, which is being repealed to update the content to reflect changes pursuant to House Bill 2654, 81st Legislature, 2009, effective September 1, 2009 as follows:

Subsection (a) contains definitions of key terms, including child, stepchild, parent, stepparent, grandparent, grandchild, sibling, guardian and decedent's estate as reflected within the Family Code and the Probate Code.

Subsection (b) contains specific rules of taxation relating to the transfer of a motor vehicle as a gift.

Subsection (c) contains specific rules of taxation relating to the transfer of a motor vehicle for no consideration when the transaction does not involve a motor vehicle dealer.

Subsection (d) contains specific rules of taxation relating to the transfer of a motor vehicle to or from a motor vehicle dealer for no consideration.

Subsection (e) contains specific rules of taxation relating to the transfer of a motor vehicle as a prize.

Subsection (f) relates to the documentation required for the transfer of a motor vehicle as a gift.

The comptroller's office has made the following change to the proposed rule. Subsection (a) is amended to include in-laws in the definition of child, grandchild, grandparent, parent and sibling. Subsection (c)(3) is amended to add examples of nonqualifying relationships and to delete in-laws as a nonqualifying relationship.

No comments were received regarding adoption of the new section.

The new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new rule implements Tax Code, §152.001(1) (concerning the definition of sale), §152.025(a) (concerning the ten dollar tax imposed on the gift of a motor vehicle), and §152.062(b) and (b-1) (concerning the notarized joint affidavit required for a gift transaction).

§3.80. Motor Vehicles Transferred as a Gift or for No Consideration.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appraisal--A written statement independently and impartially prepared by a qualified appraiser employing generally accepted appraisal methods and techniques, in a narrative format or on a form chosen by the appraiser, setting forth an opinion as to the current fair market value of an adequately described motor vehicle and any accessories or equipment that may be affixed to the motor vehicle. The appraisal must be sufficiently descriptive to enable a third party to readily ascertain the estimated value of the vehicle and the rationale for that estimate.

(2) Book value--The value, in dollars and cents, of a motor vehicle on the owner's books and records at the time the vehicle is transferred based on General Accepted Accounting Principles (GAAP).

(3) Child--The biological son or daughter of a parent or parents; or the son or daughter of a parent or parents by virtue of legal adoption; or the son or daughter of a parent who, pursuant to Family Code, Chapter 160, is presumed to be a biological parent, has executed an acknowledgment of parenthood or has been adjudicated to be a biological parent by court decree. The term "child" includes a child in the care of a foster parent as that term is defined in this subsection and the spouse of a child as herein defined.

(4) Community property--All property, both real and personal other than separate property, acquired by the husband or wife during marriage. All property acquired during a marriage by either spouse is presumed to be community property.

(5) Common-law marriage--An informal marriage where a man and woman have agreed to be husband and wife, are presently living together in Texas as husband and wife, and who hold themselves out to the public in Texas as being husband and wife. Every marriage entered into in Texas is presumed to be valid unless expressly void by statute.

(6) Consideration--The amount paid or to be paid for a motor vehicle, valued in money, as prescribed in Tax Code, §152.002, or anything of monetary value including but not limited to cash or the equivalent, a book entry reflecting cash received or paid, the forgiveness or assumption of debt, book entries reflecting accounts receivable or accounts payable for an item, or issuance of stock when stock ownership in the subsidiary is less than 100%. Consideration does not include any amount equal to less than 10% of a motor vehicles current appraised fair market value at the time of transfer.

(7) Dealer--A person who holds a license to sell motor vehicles issued pursuant to Transportation Code, Chapter 503, Subchapter B, or under similar regulatory requirements of another state. The term "dealer" includes a dealer that holds a franchised dealer's license issued pursuant to Occupation Code, Chapter 2301, for a particular make of new motor vehicle, an independent dealer licensed to sell motor vehicles other than new motor vehicles, a wholesale motor vehicle dealer, an independent mobility motor vehicle dealer, a wholesale auction dealer, a motorcycle dealer, a trailer or semitrailer dealer, including house or travel trailers, an independent mobility dealer, or any other dealer as provided by Transportation Code, Chapter 503, Subchapter B. The term "dealer" does not include a drive away operator or a salvage vehicle dealer licensed pursuant to Occupation Code, Chapter 2302.

(8) Decedent's estate--The real and personal property of a deceased person subject to distribution by will or the laws of descent and distribution. The term includes property held in joint tenancy or joint ownership with a right of survivorship.

(9) Foster parent--A person who under the authority of a governmental agency, or a private adoption or foster care agency provides foster or substitute care as defined in Tax Code, §700.1301, for a child who is currently under the care of said foster parent in their home.

(10) Grandchild--The child of one's son or daughter by birth or legal adoption. The term "grandchild" includes a step-grandchild and the spouse of a grandchild as herein defined.

(11) Grandparent--The father or mother of a child's parent or parents either by birth or legal adoption. The term "grandparent" includes a step-grandparent and the spouse of a grandparent as herein defined.

(12) Guardian--A person appointed by a court to have the legal authority over and care of the real and personal property or the person of a minor or a incapacitated person as evidenced by a certificate of guardianship or letters of guardianship. The term "guardian" includes a general, limited, temporary or successor guardian, a guardian of a local, county or regional guardianship program, or a certified public guardian or certified private professional guardian in the business of providing guardianship services. The term "guardian" does not include a guardian ad litem appointed to represent an incapacitated person in a guardianship proceeding.

(13) Motor vehicle--A self-propelled vehicle designed to transport persons or property upon the public highways and a vehicle designed to be towed by a self-propelled vehicle while carrying property. The term "motor vehicle" includes, but is not limited to, automobiles, motor homes, motorcycles, trucks, truck tractors, trailers, semitrailers, house or travel trailers, trailers sold unassembled in a kit, dollies, jeeps, stingers, auxiliary axles, converter gears, and truck cab/chassis. A unit that meets the definition of a "motor vehicle" does not lose its identity as a motor vehicle if tangible personal property is added to the vehicle allowing the unit to perform a specialized function but prohibiting the vehicle from transporting separate property or persons other than the driver. An example of such a vehicle would be a truck cab/chassis upon which oil well servicing equipment is attached.

(14) Parent--The biological mother or father of a child, or the mother or father of a child by virtue of legal adoption, or a person who, pursuant to Family Code, Chapter 160, is presumed to be a biological parent or has executed an acknowledgment of parenthood or has been adjudicated to be the biological parent by court decree. The term "parent" includes foster parent as that term is defined in this subsection and the spouse of a parent as herein defined.

(15) Separate property--Any property, both real and personal, owned by a spouse before marriage, or acquired during the marriage by gift, devise, or descent.

(16) Sibling--One of two or more individuals having one common parent by birth, legal adoption or marriage. The term includes brother, sister, half-brother, half-sister, step-brother or step-sister, brother in-law or sister in-law.

(17) Spouse--A person to whom one is legally married as husband or wife either by formal ceremony or by common-law pursuant to Family Code, Title 1, Subtitle A, or a comparable law of another jurisdiction.

(18) Standard presumptive value--The taxable value of a private-party transfer of ownership to a motor vehicle, as determined by §3.79 of this title (relating to Standard Presumptive Value).

(19) Stepchild--The biological or adopted child of one's current spouse from a previous marriage whose parent-child relationship is through marriage only and not by birth or adoption.

(20) Stepparent--The current spouse of a child's mother or father whose only relationship to the child is through marriage and not by birth or adoption.

(b) Transfer of a motor vehicle as a gift. Effective September 1, 2009, a $10 gift tax is imposed on the recipient of a joint or undivided ownership interest in a motor vehicle for no consideration as follows:

(1) The transfer of a motor vehicle to a recipient from a parent, step-parent, grandparent, step-grandparent, child, stepchild, grandchild, step-grandchild, foster parent, sibling, or guardian.

(2) The transfer of a motor vehicle from a spouse when the vehicle is the separate property of the spouse, such as a motor vehicle owned by a spouse prior to marriage. A motor vehicle acquired by a spouse after marriage is presumed to be community property and not subject to either gift tax or motor vehicle sales and use tax when title is transferred between husband and wife.

(3) The transfer of a motor vehicle from a decedent's estate to the lawful devisees or heirs by will or by the laws of descent and distribution, including a motor vehicle transferred to:

(A) the surviving owner or owners of a motor vehicle owned jointly by two or more parties when there is a right of survivorship agreement signed by the joint owners on file with the Department of Motor Vehicles pursuant to Transportation Code, §501.031; or

(B) the representative of the decedent by the trustee of a trust which terminates upon the decedent's death.

(4) The transfer of a motor vehicle from or to a nonprofit organization that:

(A) obtains a determination letter or a group exemption ruling letter from the Internal Revenue Service (IRS) that states that the organization qualifies for exemption from federal income tax under Title 26, Internal Revenue Code, §501(c)(3);

(B) is organized and operated for:

(i) religious, charitable, scientific, literary, or educational purposes;

(ii) testing for public safety;

(iii) prevention of cruelty to children or animals; or

(iv) promotion of amateur sports competition; and

(C) uses the motor vehicle exclusively for the purposes for which the organization was established.

(5) To be a valid gift or transfer of title to community property between spouses, the principal parties to the transfer of a motor vehicle for no consideration must file, with the county tax assessor-collector, a properly completed Texas Affidavit of Motor Vehicle Gift Transfer, Form 14-317. A properly completed affidavit must conform to the requirements pursuant to subsection (f) of this section.

(c) Transfer of a motor vehicle for no consideration, except for transfers involving a dealer. Effective September 1, 2009, the recipient of a joint or undivided ownership interest in a motor vehicle for no consideration that does not qualify as a gift pursuant to subsection (b) of this section or is not exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E, is subject to sales and use tax. The amount on which the tax is computed is as follows:

(1) the standard presumptive value of the vehicle; or

(2) if there is no standard presumptive value for the vehicle, the recipient must provide a value for the vehicle to the tax assessor-collector by means of:

(A) documentation listing a minimum suggested sales price based on the condition of the vehicle at the time of transfer as provided by a nationally recognized motor vehicle value guide service or motor vehicle value guide publication; or

(B) an appraisal listing the fair market value of the vehicle at the time of transfer.

(3) Transfers of motor vehicles for no consideration that do not qualify as a gift include but are not limited to:

(A) A motor vehicle transferred between individuals, including, but not limited to aunts, uncles, nephews, nieces, cousins and unmarried couples.

(B) A motor vehicle transferred to or from a nonprofit organization that:

(i) is not exempt from federal income tax under 26 U.S.C., §501(c)(3);

(ii) is not exempt from motor vehicle sales and use tax pursuant to Tax Code, §152.087, relating to volunteer fire departments and emergency medical service providers exempt under 26 U.S.C., §501(a); or

(iii) is not exempt from sales and use tax pursuant to Tax Code, §152.088, relating to churches, and religious societies.

(C) A motor vehicle transferred between corporations, limited liability companies, partnerships and trusts; or between an individual and a corporation, limited liability company, partnership or trust.

(d) Transfer of a motor vehicle to or from a dealer.

(1) The transfer of a joint or undivided ownership interest in a motor vehicle for no consideration from a dealer that is in business as a sole proprietor is subject to tax by the recipient of the vehicle based on the book value of the vehicle at the time of the transfer unless the transaction qualifies as a gift pursuant to subsection (b) of this section, or is exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E.

(2) The transfer of a joint or undivided ownership interest in a motor vehicle for no consideration to a dealer that is in business as a sole proprietor is subject to tax by the dealer on the value of the vehicle pursuant to subsection (c)(2) of this section, at the time of the transfer unless the transaction qualifies as a gift pursuant to subsection (b) of this section, or is exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E.

(3) The transfer of a joint or undivided ownership interest in a motor vehicle for no consideration from a dealer that is a corporation, limited liability company, partnership or trust is subject to tax by the recipient of the vehicle based on the dealer's book value of the vehicle at the time of the transfer, unless the transaction qualifies as a gift pursuant to subsection (b)(4) of this section, or is exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E.

(4) The transfer of a joint or undivided ownership interest in a motor vehicle for no consideration to a dealer that is a corporation, limited liability company, partnership or trust is subject to tax by the dealer on the value of the vehicle pursuant to subsection (c)(2) of this section, at the time of the transfer, unless the transaction qualifies as a gift pursuant to subsection (b)(4) of this section or is exempt from tax pursuant to Tax Code, Chapter 152, Subchapter E.

(e) Transfer of a motor vehicle as a prize. A joint or undivided ownership interest in a motor vehicle that is transferred to the winner of a contest or drawing, regardless of how the contest or drawing is held, is subject to sales and use tax as follows:

(1) A motor vehicle that is purchased by a contest sponsor and transferred directly from the seller of the vehicle to the contest winner is subject to tax based on the total consideration paid for the vehicle. The tax is the liability of the contest sponsor and is due and payable before the vehicle can be titled and/or registered.

(2) A motor vehicle that is transferred directly from the seller of the vehicle to a contest sponsor for consideration and the sponsor subsequently transfers the vehicle to the contest winner is subject to tax as follows:

(A) the sponsor owes tax on the total consideration paid for the vehicle to the seller; and

(B) the winner owes sales and use tax based on the taxable value pursuant to subsection (c) of this section, unless the transfer from the sponsor to the winner qualified as a gift pursuant to subsection (b)(4) of this section.

(3) The transfer of a motor vehicle directly from the owner of the vehicle to a contest sponsor for no consideration, and the subsequent transfer of the vehicle from the sponsor to the contest winner are both subject to tax pursuant to subsection (c) of this section unless:

(A) the owner of the vehicle is a dealer, then the sponsor owes tax based on the dealer's book value of the vehicle at the time of the transfer and the winner owes tax pursuant to subsection (c) of this section; or

(B) if the sponsor qualifies as a nonprofit organization pursuant to subsection (b)(4) of this section, then the $10 gift tax is due by both the sponsor and the winner.

(4) The transfer of a motor vehicle directly to the winner of a contest or drawing from a manufacturer or dealer of motor vehicles that sponsored the contest or drawing is subject to tax by the winner based on the manufacturer's or dealer's book value of the vehicle at the time of transfer.

(5) The transfer of a motor vehicle directly from a sponsor of a contest or drawing located outside of Texas to a winner who is a Texas resident or who is domiciled or doing business in Texas is subject to use tax by the winner pursuant to subsection (c) of this section if the vehicle is brought into Texas for use on the public highways of Texas unless:

(A) the sponsor is a manufacturer or dealer, then the winner owes tax on the manufacturer's or dealer's book value of the vehicle at the time of transfer; or

(B) the sponsor qualifies as a nonprofit organization pursuant to subsection (b)(4) of this section, then the $10 gift tax is due by the winner.

(f) Documentation required for a gift of a motor vehicle. The principal parties to the transfer of a motor vehicle as the result of a gift or transfer of title to community property between spouses pursuant to subsection (b) of this section, must file comptroller's form 14-317, Texas Affidavit of Motor Vehicle Gift Transfer, with the tax assessor-collector of the county in which the Application for Texas Certificate of Title, form 130-U, is submitted.

(1) To be valid, the affidavit must be properly completed and contain the signatures of all principal parties to the transaction sworn to and subscribed before either:

(A) a notary public of Texas or the equivalent from some other state or jurisdiction; or

(B) a county tax assessor-collector or an employee of the county tax assessor-collector pursuant to Government Code, §602.002.

(2) the party or parties whose signature is being acknowledged must:

(A) be present and sign the affidavit in front of the tax assessor-collector or an employee of the county tax assessor-collector; or

(B) have a signed power of attorney from any absent party or the signature of the absent party must be formally certified pursuant to paragraph (1)(A) of this subsection.

(3) Pursuant to Tax Code, §152.062, the tax assessor-collector may examine each Texas Affidavit of Motor Vehicle Gift Transfer or Application for Texas Certificate of Title for their truth and accuracy. If the tax assessor-collector has reason to question the validity of the information in an affidavit or application for title, or if any material fact fails to meet the guidelines required by the Comptroller, the tax assessor-collector may request that any party to the affidavit or application for title furnish further substantiation for the information contained in the affidavit or application for title, including but not limited to documentation used to arrive at a taxable value, or proof of marriage, certified copies of birth certificates, decrees of adoption, baptismal records, court orders establishing paternity or voluntary admissions of paternity.

(4) Pursuant to Tax Code, §152.101, a person commits a felony of the third degree by signing an affidavit or application for title required by this section if he or she knows that it is false in any material fact.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005520
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: October 13, 2010
Proposal publication date: April 2, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

34 TAC §9.419

The Comptroller of Public Accounts adopts an amendment to §9.419, concerning procedures for determining property tax exemption for motor vehicles leased for personal use, without changes to the proposed text as published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6630).

This section is being amended to increase administrative efficiency by providing for comptroller revision of applicable forms that are not required to be adopted by rule, to improve general readability, and to delete unnecessary language regarding appraisal review boards. The amendment is a result of a rule review of Texas Administrative Code, Title 34, Part 1, Chapter 9, Subchapter C, conducted by the comptroller. The rule review was performed pursuant to Government Code, §2001.039 and resulted in a determination that the reasons for initially adopting §9.419 continue to exist.

No comments were received regarding adoption of the amendment.

This amendment is adopted pursuant to Government Code, §2001.039(c), which authorizes the readoption of a rule with amendments upon agency assessment, in conducting a rule review, of whether the reasons for initially adopting the rule continue to exist.

This amendment implements Tax Code, §11.252 and §11.43.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2010.

TRD-201005446
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: October 10, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

SUBCHAPTER I. VALIDATION PROCEDURES

34 TAC §9.4033

The Comptroller of Public Accounts adopts an amendment to §9.4033, concerning allocation of value, without changes to the proposed text as published in the July 30, 2010, issue of the *Texas Register* (35 TexReg 6639).

This section is being amended to increase administrative efficiency by providing for comptroller revision of applicable forms. The amendment is a result of a rule review of Texas Administrative Code, Title 34, Part 1, Chapter 9, Subchapter I, conducted by the comptroller. The rule review was performed pursuant to Government Code, §2001.039 and resulted in a determination that the reasons for initially adopting §9.4033 continue to exist.

No comments were received regarding adoption of the amendment.

This amendment is adopted pursuant to Government Code, §2001.039(c), which authorizes the readoption of a rule with amendments upon agency assessment, in conducting a rule review, of whether the reasons for initially adopting the rule continue to exist.

This amendment implements Tax Code, §§5.07(a) - (b), 21.03(b), and 22.24.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 20, 2010.

TRD-201005447
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: October 10, 2010
Proposal publication date: July 30, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

PART 12. STATE EMPLOYEE CHARITABLE CAMPAIGN

CHAPTER 329. ELIGIBILITY CRITERIA FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §329.3

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) adopts an amendment to §329.3, concerning 25% administrative cost cap, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6499).

This rule sets out the formula a charitable organization must use for determining its administrative and fund raising costs from the information contained on the organization's new-version IRS form 990.

No comments were received regarding adoption of the amendment.

The amendment is authorized under the authority of Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment also implements Government Code, §659.140(e)(3), wherein the SPC is directed to determine the eligibility of a federation or fund and its affiliated agencies to participate in the SECC. Basic eligibility requirements, including a cap on administrative expenses, are addressed by statute in Government Code, §659.146, concerning eligibility of charitable organizations in general and eligibility of federations and funds for statewide participation. This amendment incorporates those basic requirements and provides a process to facilitate review of an organization based on those provisions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005535
Mike Esparza
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Effective date: October 14, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

CHAPTER 330. ELIGIBILITY CRITERIA FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §330.3

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) adopts an amendment to §330.3, concerning 25% administrative cost cap, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6500).

This rule sets out the formula a charitable organization must use for determining its administrative and fund raising costs from the information contained on the organization's new-version IRS form 990.

No comments were received regarding adoption of the amendment.

The amendment is authorized under the authority of Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment also implements Government Code, §659.140(e)(3), wherein the SPC is directed to determine the eligibility of a federation or fund and its affiliated agencies to participate in the SECC. Basic eligibility requirements, including a cap on administrative expenses, are addressed by statute in Government Code, §659.146, concerning eligibility of charitable organizations in general and eligibility of federations and funds for statewide participation. This amendment incorporates those basic requirements and provides a process to facilitate review of an organization based on those provisions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005536

Mike Esparza
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Effective date: October 14, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

CHAPTER 331. REVIEW AND APPEAL PROCEDURES FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §331.5

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) adopts an amendment to §331.5, concerning appeal process, with changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6501). The change consists of adding the acronym "(SCM)" after the words "state campaign manager's" to conform to Texas Register style and usage. The change to the proposed text affects no new persons and raises no new issues; therefore, the rule was not required to be re-published prior to adoption.

This rule is amended to provide that electronic copies of appeals will not be accepted in the place of a hard copy of the appeal documents.

No comments were received regarding adoption of the amendment.

The amendment is authorized under the authority of Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment also implements Government Code, §659.146, which authorizes the SPC to consider appeals from its original decisions related to the eligibility of a charitable organization to participate in the SECC campaign.

§331.5. Appeal Process.

No statewide federation or affiliate whose application was not complete will be considered for appeal by the State Employee Charitable Campaign Policy Committee (SPC). All appeals must be in writing and must be received in the state campaign manager's (SCM) office prior to the deadline set by the SCM. Appeals shall include the complete application originally submitted to the SPC and the letter of denial from the SPC. Electronic or faxed appeals will not be accepted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005537

Mike Esparza
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Effective date: October 14, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

CHAPTER 332. REVIEW AND APPEAL PROCEDURES FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §332.5

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) adopts an amendment to §332.5, concerning appeal process, with changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6502). The change consists of adding the acronym "(SCM)" after the words "state campaign manager's" to conform to Texas Register style and usage.

This rule is amended to provide that electronic copies of appeals will not be accepted in the place of a hard copy of the appeal documents.

No comments were received regarding adoption of the amendment.

The amendment is authorized under the authority of Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment also implements Government Code, §659.147, which authorizes appeals from local decisions to the SPC regarding eligibility of a charitable organization to participate in the SECC campaign.

§332.5. Appeal Process.

All appeals from a Local Employee Committee regarding eligibility shall be made to the State Employee Charitable Campaign Policy Committee (SPC). No local federation, affiliate or local organization whose application was denied by the Local Employee Committee for incomplete documentation will be considered for appeal by the SPC. All appeals must be in writing and must be received in the state campaign manager's (SCM) office prior to the deadline set by the SCM. Appeals shall include the complete application originally submitted to the Local Employee Committee and the letter of denial from the Local Employee Committee. Electronic or faxed appeals will not be accepted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005538
Mike Esparza
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Effective date: October 14, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

CHAPTER 333. CAMPAIGN MATERIALS

34 TAC §333.1

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) adopts an amendment to §333.1, concerning logo, without changes to the proposed text as published in the July 23, 2010, issue of the *Texas Register* (35 TexReg 6502).

This rule is amended to provide that the words "State Employee Charitable Campaign" must be included as part of the only approved logo that has been previously approved by the SPC.

No comments were received regarding adoption of the amendment.

The amendment is authorized under the authority of Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The amendment also implements Government Code, §659.140, which directs the SPC to approve campaign materials used in the SECC.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 24, 2010.

TRD-201005539
Mike Esparza
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Effective date: October 14, 2010
Proposal publication date: July 23, 2010
For further information, please call: (512) 475-0387

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.23

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §211.23, concerning the Date of Licensing or Certification, with changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5493) and will be republished.

The amendment adds language to 37 TAC §211.23, Date of Licensing or Certification.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.152, Rules Relating To Hiring Date of Peace Officer.

§211.23. Date of Licensing or Certification.

(a) The commission shall designate a person's date of initial appointment as their licensing date when it has received and verified proof that all licensing standards have been met. Documentation proving eligibility for licensing on the date of initial appointment shall be kept in the appointing agency's file.

(b) Any such document may expire or be cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated. Mere possession of the physical document does not necessarily mean that the person:

(1) currently holds, has ever held, or has any of the powers of the office indicated on the document; or

(2) still holds an active, valid license or certificate.

(c) The effective date of this section is October 28, 2010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005488
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.3, concerning Academy Licensing, with changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5493) and will be republished.

The amendment adds language to 37 TAC §215.3, Academy Licensing.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.251, Training Programs; Instructors.

§215.3. Academy Licensing.

(a) A state or any political subdivision of the state may make application to provide law enforcement, corrections, telecommunications, and/or other law enforcement related training. The entity must be based on at least one of the following sponsoring organizations:

(1) a law enforcement agency with a minimum of 75 full-time paid peace officers, county jailers, and/or telecommunicators under current appointment;

(2) an institution recognized by the Texas Higher Education Coordinating Board (THECB); or

(3) a regional planning commission or councils of governments' (COG) board. The commission will issue only one academy license within each regional planning commission or councils of governments' area at any one time.

(b) As part of the electronic application process, the following documents shall be submitted:

(1) the proposed formal name of the academy, which must not misrepresent the status of the academy or be confusing to law enforcement or to the public;

(2) a proposed course schedule to show that training will be conducted on a continuing basis;

(3) a schedule of tuition and fees that will be charged, if any;

(4) documentation of compliance with the electronic reporting requirements of §1701.1523;

(5) documentation that an advisory board has already been appointed as required by §215.7 of this chapter and §1701.252 of the Texas Occupations Code;

(6) advisory board minutes that show the advisory board has complied with the requirements of §215.7 of this chapter;

(7) the name and PID of the proposed training coordinator;

(8) documentation that the training coordinator is in compliance with the responsibilities required by law, or rule, to include but not limited to §215.9 of this chapter;

(9) the physical location and a description of the proposed training facility and any satellite sites;

(10) documentation of any contract an academy may have as cosponsor with law enforcement agencies and other entities to conduct continuing education classes or basic county corrections training; and

(11) at the request of the executive director the applicant must forward for approval resumes for each board member.

(c) A training needs assessment must be completed and submitted for commission approval and shall include:

(1) a description of whom the academy will serve, including the identity of each law enforcement agency the academy expects to serve, the number of officers the academy expects to train annually from each agency, and the basis for the academy's expectations;

(2) the number and types of courses that will be offered; and

(3) proof of notification by e-mail to all licensed academies within the regional planning commission or councils of governments' area of their intent to apply for an academy license and what specific training needs the applicant intends to meet.

(d) Upon approval of the application the proposed academy must pass an inspection of its facilities and instructional materials. The inspection shall be conducted by commission staff or by a team of academy coordinators as appointed by the executive director. An academy must have and maintain:

(1) qualified instructors and staff to conduct successful training;

(2) instructional resources to conduct successful training, to include, but not limited to, convenient access to a law enforcement reference library or sufficient number of computers for student and staff use;

(3) access to current and appropriate teaching tools and electronic equipment, including video players, projection equipment, computer hardware, software, and the Internet;

(4) a proprietary interest in or a written contract providing for a firing range suitable for the course of fire required in the current basic peace officer course, with safety rules clearly posted, secure storage and first aid equipment while on the premises; and

(5) a proprietary interest in or a written contract providing for at least one facility to conduct police driving training, to include at least one law enforcement automobile for training.

(e) The chief administrator of the sponsoring organization and the proposed training coordinator must appear before the commissioners to respond to questions prior to action being taken on the application.

(f) Once an academy license is issued, the chief administrator of the sponsoring organization, or the training coordinator, must report in writing to the commission within 30 days:

(1) any change in the chief administrator or training coordinator;

(2) any failure to meet commission rules and standards by the academy, training coordinator, instructors, or advisory board;

(3) when non-compliance with federal or state requirements is discovered; or

(4) any change in academy name, physical location, mailing address, electronic mail address, or telephone number.

(g) The commission will award training credit for any course conducted by a licensed academy as provided by commission rules unless the:

(1) course is not conducted as required by commission rules;

(2) training is not related to a commission license;

(3) advisory board, the academy, the training coordinator, the course coordinator, or the instructor failed to discharge any responsibility required by commission rule; or

(4) credit was claimed by deceitful means.

(h) The commission may suspend an academy license, or the executive director or his designee may issue a written reprimand to the sponsoring organization, if the:

(1) academy or the sponsoring organization fails to comply with commission rules or any law; or

(2) academy has been classified as at risk under §215.13 of this chapter.

(i) The commission may cancel an academy license if it was issued in error or based on false or incorrect information.

(j) The commission may revoke an academy license if the:

(1) academy has been classified as at risk under §215.13 of this chapter for a 12-month period without complying with commission rules;

(2) training coordinator intentionally or knowingly submits a falsified document or a false written statement or representation to the commission; or

(3) academy has not met the needs of the communities and/or agencies that it serves.

(k) An academy may surrender its license at any time or for any reason. To surrender the license, the chief administrator of the sponsoring organization must send written notice, accompanied by the license, to the executive director. The surrender is effective immediately upon receipt by the executive director.

(l) The effective date of this section is October 28, 2010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005489

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: October 28, 2010

Proposal publication date: June 25, 2010

For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §215.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.5, concerning Contractual Training, with changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5495) and will be republished.

The amendment adds language to 37 TAC §215.5, Contractual Training.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.251, Training Programs; Instructors.

§215.5. Contractual Training.

(a) A law enforcement agency, a law enforcement association, alternative delivery trainer, or proprietary training contractor may make application to conduct training for licensees.

(b) As part of the electronic application process, the following documentation shall be submitted:

(1) documentation that an advisory board has been appointed as provided by §215.7 of this chapter and §1701.252 of the Texas Occupations Code;

(2) advisory board minutes that show the advisory board has complied with the requirements of §215.7 of this chapter;

(3) documentation of compliance with the electronic reporting requirements of §1701.1523;

(4) the name and PID of the proposed training coordinator;

(5) documentation that the training coordinator is in compliance with the responsibilities required by contract, law, or rule, to include but not limited to §215.9 of this chapter;

(6) a schedule of tuition and fees that will be charged, if any;

(7) selection of a training facility and instructional materials that meets inspection requirements identified in §215.3(d) of this chapter, as determined by the commission; and

(8) at the request of the executive director the applicant must forward for approval:

(A) resumes for each board member; and/or

(B) at least one copy of the learning objectives of each course covered by the contract.

(c) A training needs assessment must be completed and submitted for commission approval and shall include:

(1) what specific training needs are to be addressed by the proposed contract; and

(2) the number and types of courses that will be offered during the first quarter of the executed contract.

(d) The chief administrator of the sponsoring organization and the proposed training coordinator must appear before the commissioners to respond to questions prior to action being taken on the application.

(e) Once a contract is issued, the chief administrator of the sponsoring organization, or training coordinator, must report in writing to the commission within 30 days:

(1) any change in chief administrator or training coordinator;

(2) any failure to meet commission rules and standards by the provider, training coordinator, instructors, or advisory board;

(3)] any change in provider name, physical location, mailing address, electronic mail address, or telephone number; or

(4) when non-compliance with federal or state requirements is discovered.

(f) A contract is limited to those terms expressly included in the contract or incorporated by reference and is:

(1) in the currently prescribed commission format;

(2) signed by the executive director;

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training coordinator responsible for the administration of that training.

(g) A contract may approve the courses and the number of times they will be offered. These contracts are for a stated period of

time but may be terminated within 10 days by written notice on the part of either party to the contract. A contract may incorporate by reference a law, rule, or any other document; however, any waiver, exception, or deletion must be expressed.

(h) The commission will award training credit for any course conducted by a contract training provider as provided by commission rules unless:

(1) the training was not conducted in compliance with the contract;

(2) the advisory board, training coordinator or instructor failed to discharge any responsibility required by commission rule; or

(3) the credit was claimed by deceitful means.

(i) A contract to provide distance education courses may be approved if the contractual training provider:

(1) submits a request, for which a recovery fee may be charged, in accordance with the commission's rules or established procedures before the course is offered;

(2) ensures that each course will have one or more sponsors assigned, who shall be responsible both for the conduct of the course and the proctoring of any examination during the course;

(3) ensures that the student, without the use of deceitful means, completes the required coursework, receives a passing grade on any examination or evaluation required by the lesson guide or learning objectives; and

(4) ensures that the student's assigned work is corrected, graded, and reviewed by qualified instructors, and returned to the student via an exchange that provides a personalized student-teacher relationship.

(j) The executive director may suspend a contract for any violation of its terms or of any commission rule or law.

(k) The executive director may terminate a contract if no training is conducted within a calendar year unless the chief administrator has petitioned the executive director for a waiver and the waiver has been granted. Any party may terminate, upon written notice to all other parties, received by the executive director, or the coordinator, or any other named person or office.

(l) The effective date of this section is October 28, 2010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005490

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: October 28, 2010

Proposal publication date: June 25, 2010

For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §215.6

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.6, concerning Academic Alternative Licensing, with changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5497) and will be republished.

The amendment adds language to 37 TAC §215.6, Academic Alternative Licensing.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.251, Training Programs; Instructors.

§215.6. Academic Alternative Licensing.

(a) A Texas college or university that is accredited by the Southern Association of Colleges and Schools (SACS) and which has a criminal justice or law enforcement program approved by the Texas Higher Education Coordinating Board (THECB) may make application to conduct training for licensees.

(b) As part of the electronic application process:

(1) documentation of approval from THECB for a criminal justice or law enforcement program;

(2) documentation that an advisory board has been appointed as provided by §215.7 of this chapter and §1701.252 of the Texas Occupations Code;

(3) advisory board minutes that show the advisory board has complied with the requirements of §215.7 of this chapter;

(4) documentation of compliance with the electronic reporting requirements of §1701.1523;

(5) the name and PID of the proposed training coordinator;

(6) documentation that the training coordinator has met the responsibilities required by contract, law, or rule, to include but not limited to §215.9 of this chapter;

(7) a proposed course schedule to show that training will be conducted;

(8) selection of a training facility and instructional materials that meet the inspection requirements identified in §215.3(d) of this chapter, as determined by the commission;

(9) documentation of any contractual provision the applicant may have with a licensed academy to provide the sequence courses;

(10) provisions for the Registrar to issue all endorsements; and

(11) at the request of the executive director the applicant must forward for approval:

(A) resumes for each board member; and/or

(B) at least one copy of the learning objectives of each alternative course provided.

(c) A training needs assessment must be submitted to the commission for approval and must include:

(1) a description of whom the alternative academic provider will serve and the number of students they expect to train annually;

(2) the basis for these expectations; and

(3) proof of notification by e-mail to all licensed academies within the area of the applicant's intent to apply for an academic alternative provider license.

(d) The dean or chair of the academic program and the proposed training coordinator must appear before the commissioners to respond to questions prior to action being taken on the application.

(e) Once a license is issued, the chief administrator or training coordinator of the academic alternative provider must report in writing to the commission within 30 days:

(1) any change in the dean of the department;

(2) any change in training coordinator;

(3) any failure to meet commission rules and standards by the training coordinator, instructors, or advisory board;

(4) any change in status with SACS and/or THECB;

(5) when non-compliance with federal or state requirements is discovered; or

(6) any change in provider name, physical location, mailing address, electronic mail address, or telephone number.

(f) The commission will award training credit for the academic alternative program when provided by licensed academic alternative providers, unless the:

(1) courses were not conducted in compliance with commission rules;

(2) courses were not conducted in compliance with THECB guidelines;

(3) advisory board, training coordinator, or instructor failed to discharge any responsibility required by rule; or

(4) credit was obtained by deceitful means.

(g) The commission may cancel an academic alternative license if it was issued in error or based on false or incorrect information.

(h) The commission may suspend an academic alternative license, or the executive director or his designee may issue a written reprimand to the dean of the department, if:

(1) the academic alternative provider fails to comply with commission rules or any law; or

(2) the academic alternative provider has been classified as at risk under §215.13 of this chapter.

(i) The commission may revoke an academic alternative license if:

(1) the academic alternative provider has been classified as at risk under §215.13 of this chapter for a 12-month period without complying with commission rules;

(2) the academic alternative provider has lost either SACS accreditation or THECB approval; or

(3) the training coordinator intentionally or knowingly submits a falsified document or a false written statement or representation to the commission.

(j) An academic alternative provider may surrender its license at any time for any reason. To surrender the license, the dean of the department must send written notice, accompanied by the license, to the executive director. The surrender is effective immediately upon receipt by the executive director.

(k) The effective date of this section is October 28, 2010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005491
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §215.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.15, concerning Basic Licensing Enrollment Standards, without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5498) and will not be republished.

The amendment adds language to 37 TAC §215.15, Basic Licensing Enrollment Standards.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.255, Enrollment Qualifications.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005492
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.8

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.8, concerning Contesting an Employment Termination Report, without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5500) and will not be republished.

The amendment adds language to 37 TAC §217.8, Contesting an Employment Termination Report.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.4525, Request for Correction of Report; Administrative Penalty; Hearing; Appeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005493
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §217.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §217.9, concerning Continuing Education Credit for Licensees, without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5500) and will not be republished.

The amendment adds language to 37 TAC §217.9, Continuing Education Credit for Licensees.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.353, Continuing Education Procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005487
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS

37 TAC §219.2

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §219.2, concerning Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police, without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5501) and will not be republished.

The amendment adds language to 37 TAC §219.2, Reciprocity for Out-of-State Peace Officers, Federal Criminal Investigators, and Military Police.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.316, Reactivation of Peace Officer License.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005494
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts new §221.28, concerning Advanced Instructor Proficiency, without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5503) and will not be republished.

The new section lists the requirements for the certificate and reflects the effective date.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Occupations Code §1701.402, Proficiency Certificates.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005495
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

CHAPTER 223. ENFORCEMENT

37 TAC §223.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.15, concerning Suspension of License, without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5503) and will not be republished.

The amendment adds language to 37 TAC §223.15, Suspension of License.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.501, Disciplinary Action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005496
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §223.16

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.16, concerning Suspension of License for Constitutionally Elected Officials, without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5505) and will not be republished.

The amendment adds language to 37 TAC §223.16, Suspension of License for Constitutionally Elected Officials.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.501, Disciplinary Action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005521
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §223.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.19, concerning Revocation of License, without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5507) and will not be republished.

The amendment adds language to 37 TAC §223.19, Revocation of License.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.501, Disciplinary Action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005498
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

37 TAC §223.20

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §223.20, concerning Revocation of License for Constitutionally Elected Officials, without changes to the proposed text as published in the June 25, 2010, issue of the *Texas Register* (35 TexReg 5507) and will not be republished.

The amendment adds language to 37 TAC §223.20, Revocation of License for Constitutionally Elected Officials.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.501, Disciplinary Action.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 22, 2010.

TRD-201005499
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: October 28, 2010
Proposal publication date: June 25, 2010
For further information, please call: (512) 936-7700

♦ ♦ ♦

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §343.272

The Texas Juvenile Probation Commission adopts amendments made to §343.272, concerning the Commission's standard on housekeeping plans for pre-adjudication and post-adjudication secure facilities. These amendments are adopted without changes as published in the April 23, 2010, issue of the *Texas Register* (35 TexReg 3226) and will not be republished.

TJPC adopts these rules in an effort to ensure pre-adjudication and post-adjudication secure facilities maintain adequate cleanliness, facility sanitation, and control of vermin and pests.

No public comment was received during the official public comment period.

These amendments are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 23, 2010.

TRD-201005512
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: October 15, 2010
Proposal publication date: April 23, 2010
For further information, please call: (512) 424-6710

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 62, Commissioner's Rules Concerning the Equalized Wealth Level, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 62 continue to exist.

The public comment period on the review of 19 TAC Chapter 62 begins October 8, 2010, and ends November 8, 2010. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-201005610
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 29, 2010

♦ ♦ ♦

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 161, Commissioner's Rules Concerning Advisory Committees, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 161 continue to exist.

The public comment period on the review of 19 TAC Chapter 161 begins October 8, 2010, and ends November 8, 2010. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-201005611
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 29, 2010

♦ ♦ ♦

Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 803, Skills Development Fund, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-201005581
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: September 28, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 813, Supplemental Nutrition Assistance Program Employment and Training, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-201005582

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Filed: September 28, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 815, Unemployment Insurance, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-201005583

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Filed: September 28, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 817, Child Labor, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-201005584

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Filed: September 28, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 833, Community Development Initiatives, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-201005585

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Filed: September 28, 2010

♦ ♦ ♦

The Texas Workforce Commission (Commission) files this notice of its intent to review Chapter 843, Job Matching Services, in accordance with Texas Government Code §2001.039.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting the rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

TRD-201005586

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Filed: September 28, 2010

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §109.1101(d)(1)

Financial Solvency Review Methodology

Critical Indicators for School Districts	Determination of Category Flags	Final Determination of School Districts to Review for Potential Financial Insolvency
Student-to-Staff Ratio Outside the Norm or Declining		
-If WADA-to-all-staff ratio less than 85% of mean ratio for group -If WADA-to-all-staff ratio declined by more than 7% from prior year -If enrollment-to-teacher ratio less than 85% of mean ratio for group -If enrollment-to-teacher ratio declined by more than 7% from prior year	Any yes causes a "Yes" flag for this category	•Any district with 3 or more flags •Any district with 2 or more flags and a fund balance less than 12.5% (1½ months) of the district's general fund expenditures •Any district with the fund balance flag and one other flag •Any district with a fund balance less than 1% of general fund expenditures
General Fund Expenditures Exceeding Revenues		
-If expenditures exceed revenues by more than 6% -If expenditures exceed revenues by more than 4% and exceeded revenues by more than 3% in the prior year -If expenditures exceed revenues by any amount *and* the district has a prior year end-of-year fund balance that has declined from the year before and that is less than 4% of the district's general fund expenditures	Any yes causes a "Yes" flag for this category	
Actual Expenditures Consistently Exceeding Budgeted Expenditures (Inability to Stay Within Budget)		
-If actual expenditures exceeded budgeted expenditures by more than 10% in the prior year -If actual expenditures exceeded budgeted expenditures by more than 6% in the prior year and actual expenditures exceeded budgeted expenditures by more than 4% two years prior	Any yes causes a "Yes" flag for this category	
Declining or Low General Fund Unreserved Fund Balance		
-If the prior year end-of-year fund balance has declined from the year before and the fund balance is less than 6.25% of the district's general fund expenditures -If the prior year end-of-year fund balance has declined from the year before by more than 25% and the fund balance is less than 12.5% (1½ months) of the district's general fund expenditures -If the prior year end-of-year fund balance is less than 1% of the district's general fund expenditures	Any yes causes a "Yes" flag for this category	

Financial Solvency Review Methodology

Critical Indicators for Open-Enrollment Charter Schools	Determination of Category Flags	Final Determination of Charter Schools to Review for Potential Financial Insolvency
Student-to-Staff Ratio Outside the Norm or Declining		•Any charter school with the net working capital balance flag and at least one other flag •Any charter school with a net working capital balance less than 1% of expenditures
-If WADA-to-all-staff ratio less than 70% of mean ratio for group -If WADA-to-all-staff ratio is less than mean ratio for group and WADA-to-all-staff ratio declined by more than 10% from prior year	Any yes causes a "Yes" flag for this category	
General Fund Expenditures Exceeding Revenues		
-If expenditures** exceed revenues by more than 8% -If expenditures exceed revenues by more than 6% and exceeded revenues by more than 4% in the prior year -If expenditures exceed revenues by more than 5% *and* the charter school has a prior year end-of-year net working capital balance* that has declined from the year before by more than 20% and that is less than 4% of general fund expenditures for the charter school	Any yes causes a "Yes" flag for this category	
Declining or Low Net Working Capital Balance*		
-If the prior year end-of-year net working capital balance has declined from the year before by more than 50% and the net working capital balance is less than 6% of the general fund expenditures for the charter school -If the prior year end-of-year net working capital balance is less than 1% of the general fund expenditures for the charter school	Any yes causes a "Yes" flag for this category	

** The net working capital balance (equivalent to a school district's general fund unreserved fund balance) is defined as current assets minus current liabilities.*

*** For charter schools, general fund expenditures do not include depreciation expenses.*

Financial Solvency Review Methodology

School District Mean Student-to-Staff Ratios

Group (Number of WADA or Enrolled Students)	Mean WADA-to-All-Staff Ratio	85% of Mean WADA-to-All-Staff Ratio	Mean Enrollment-to-Teacher Ratio	85% of Mean Enrollment-to-Teacher Ratio
Under 100	11.71	9.95	8.39	7.13
100 to 249	11.55	9.82	9.48	8.06
250 to 499	11.97	10.18	10.73	9.12
500 to 999	12.35	10.50	11.48	9.76
1,000 to 1,599	11.93	10.14	12.45	10.58
1,600 to 2,999	11.83	10.06	13.52	11.50
3,000 to 4,999	12.05	10.24	14.29	12.15
5,000 to 9,999	12.24	10.40	14.80	12.58
10,000 to 24,999	12.60	10.71	14.88	12.65
25,000 to 49,999	12.75	10.83	15.01	12.76
50,000 and Over	12.99	11.04	15.06	12.80

Charter School Mean Student-to-Staff Ratios

Group (Number of WADA)	Mean WADA-to-All-Staff Ratio	85% of Mean WADA-to-All-Staff Ratio
Under 100	12.87	10.94
100 to 249	12.93	10.99
250 to 499	14.25	12.11
500 to 999	15.16	12.89
1,000 to 1,599	14.92	12.68
1,600 to 2,999	15.56	13.22
3,000 to 4,999	16.32	13.87
5,000 to 9,999	16.96	14.42

Figure: 22 TAC §376.25

TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS
COMPLAINT FORM

Date: _____

It is very important that you fill out this form completely. Please type or neatly print in black or blue ink. I we are unable to read your complaint, we will not be able to help you.

Mail To:
TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS
INVESTIGATIONS DIVISION
P.O. Box 12216
Austin, Texas 78711-2216

1.	**COMPLAINANT'S FULL NAME:**	**COMPLAINANT'S ADDRESS (Street):** (City, State, Zip):
	HOME TELEPHONE #: ( ) - WORK TELEPHONE #: ( ) -	COMPLAINANT'S DATE OF BIRTH (mm/dd/yyyy):
2.	**PODIATRIST INVOLVED:**	
	ADDRESS:	CITY, STATE, ZIP:
	OFFICE TELEPHONE #: ( ) -	
3.	**(Other Podiatry/Medical Opinions Received):** NAME: ADDRESS: TELEPHONE #: ( ) -	
	(Other Podiatry/Medical Opinions Received): NAME: ADDRESS: TELEPHONE #: ( ) -	

4.	**Nature of Complaint(s):** Clearly state the nature of your complaint and enclose copies of any records, or reports from a second podiatrist (DPM) or physician (MD/DO) which will support your statement. ***COMPLAINT FORM MUST BE SIGNED & DATED.*** (Attached Additional Pages if Necessary.)

I affirm that all the information provided by me in connection with my complaint, whether on this form or supplemental/subsequent to this form, is true and correct, and I submit this complaint without any misstatement, falsification, or omission of information. I have read the preceding statement and it is true to the best of my information and belief.

I authorize any of the persons or organizations referenced in this form to provide the Board with any and all information with regard to any of the subjects covered by this complaint, and I release all such parties from all liability from any damages which may result from furnishing such information to the Board.

If my complaint would be more appropriately addressed by a different agency or medical society, I authorize the Texas State Board of Podiatric Medical Examiners to forward/refer my complaint to that agency or medical society.

I am the person named in this form/complaint.

THIS FORM MUST BE SIGNED AND DATED:

_____ _____

SIGNATURE **DATE**

THE CITIZEN COMPLAINT PROCESS

[http://www.foot.state.tx.us/complaint.htm]

WHO MAY FILE A COMPLAINT?

Anyone may file a complaint with the Texas State Board of Podiatric Medical Examiners against a podiatrist.

HOW DO I FILE A COMPLAINT?

A complaint must be submitted in writing; signed/dated. You may use this form for that purpose.

HOW ARE COMPLAINTS INVESTIGATED?

Trained professionals investigate the complaints. An investigator may contact you for additional information, to secure your written statement, or for written permission to obtain copies of your medical records if necessary/warranted.

A complaint involving physician competency may require a lengthy investigation by medical experts.

All investigative material (including medical records, investigator's reports, and reviews by board consultants) become part of the Board's confidential investigative files.

WILL I BE TOLD THE STATUS OF MY COMPLAINT

You will receive a letter acknowledging receipt of your complaint.

If your complaint is within the Board's jurisdiction, we will reasonably notify you of the status of your complaint, unless such notice would jeopardize an investigation, until final action is taken.

Should your complaint be outside the Board's jurisdiction, we will notify you.

WHAT COMPLAINTS DO NOT FALL WITHIN THE BOARD'S JURISDICTION?

Rudeness, records, fee/billing complaints, professional disputes/conflicts, etc. and the like. These issues can be directed to the state Podiatric Society or Trade Association (i.e. Texas Podiatric Medical Association; 512-494-1123; http://www.txpma.org).

Complaints against doctors who are not D.P.M.s and complaints regarding other health care providers or hospitals. Such complaints should be directed to the appropriate state licensing agency: http://www.texas.gov

Complaints regarding the unlicensed practice of podiatry should be referred to your local police department, as this activity is a criminal misdemeanor.

WHAT COMPLAINTS ARE WITHIN THE BOARD'S JURISDICTION?

The most frequent types of consumer complaints are:

Non-therapeutic prescribing/administering of a drug or treatment;

Professional incompetency;

Inability to practice podiatry by reason of mental or physical impairment (alcohol or chemical abuse, mental or physical condition);

Unprofessional conduct which may endanger the public.

WHAT ACTION CAN THE BOARD TAKE?

If we lack sufficient evidence of a violation of the Podiatry Practice Act, then we will close the investigation.

If the investigation establishes that a podiatrist violated the Podiatry Practice Act, the Board may order corrective procedures or disciplinary action ranging from a written reprimand to the most severe measure, revocation of license.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the Issuer) at 10:00 a.m. on October 25, 2010 at 2200 East Martin Luther King Jr. Blvd. (Conference Room), Austin, Texas 78702, on the proposed issuance, pursuant to a plan of financing, by the Issuer of one or more series of revenue bonds (the Bonds) to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to (i) its professional educators home loan program, (ii) its fire fighter, law enforcement or security officer, and emergency medical services personnel home loan program and (iii) its low income home loan program (the Projects). The maximum aggregate face amount of the Bonds to be issued with respect to the Projects is $335,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Projects and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to Paige McGilloway at the Texas State Affordable Housing Corporation, 2200 East Martin Luther King Jr. Blvd., Austin, Texas 78702; 1-888-638-3555 ext. 3561.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at 1-888-638-3555, ext. 3560 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Paige McGilloway at pmcgilloway@tsahc.org.

TRD-201005621
David Long
President
Texas State Affordable Housing Corporation
Filed: September 29, 2010

♦ ♦ ♦

Texas Department of Agriculture

Request for Applications: Aquaculture Grant Program

In accordance with clause (3) of Section 32 of the Agricultural Adjustment Act of August 24, 1935 (Section 32), the Farm Service Agency (FSA) will provide block grants to the Texas Department of Agriculture (TDA) to administer a 2009 Aquaculture Grant Program (AGP) to assist aquaculture producers for losses associated with high feed input costs during the 2009 calendar year. TDA will accept applications beginning the date of this publication until Monday, November 15, 2010 from eligible aquaculture producers in Texas.

Eligibility Criteria. To be eligible for the Texas 2009 Aquaculture Grant Program you must be an aquaculture producer who:

1. Raises **any** aquaculture species in a controlled environment as part of a farming operation;

2. Has a risk in the production of such species;

3. Produced an aquaculture species for which 2009 feed costs represented at least 25 percent of the producer's total input costs;

4. Experienced at least a 25 percent price increase of 2009 feed costs above the state's 5-year average (2003 - 2007); and

5. Has records on file with the USDA Farm Service Agency showing compliance with program adjusted gross non-farm income limitations and conservation compliance provisions.

Submitting an Application. Applications are currently being accepted, and must be submitted on the form provided by TDA. Application forms are currently available on TDA's website at www.TexasAgriculture.gov, or available upon request from TDA by calling (512) 463-6695. Applications must be submitted to TDA headquarters in Austin, Texas. If mailing in the application, please make sure it is in a properly addressed envelope. The application must be received by TDA by Monday, November 15, 2010. Applications must be certified by the applicant, include required supporting documentation, and bear a notarized signature of the aquaculture producer. A producer must complete Section 4 of the application for each species of aquaculture they are applying for.

Payment Calculations. The producer's loss for each aquaculture species will be calculated by subtracting the producer's 2009 average feed price minus the state's five-year average times the producer's total feed deliveries in calendar year 2009. TDA will provide assistance to eligible producers in the form of feed credits. The amount of assistance provided under this program to a farming operation will not be permitted to exceed the lesser of:

1. The amount of loss suffered by the eligible aquaculture producer as a result of high feed input costs during the 2009 calendar year, as determined by TDA; or

2. $100,000, except for general partnerships and joint ventures in which case assistance will not exceed $100,000 times the number of members that constitute the general partnership or joint venture.

Deadline for Submission of Applications. Applications must be received by TDA no later than **5:00 p.m. on Monday, November 15, 2010.**

Further Information. Additional information about the 2009 Aquaculture Grant Program or the application process can be found on TDA's website at www.TexasAgriculture.gov. In addition, producers may contact Ms. Lindsay Dickens, TDA Grants Specialist, at (512) 463-6695 or Lindsay.Dickens@TexasAgriculture.gov for more information.

TRD-201005623
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: September 29, 2010

♦ ♦ ♦

Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title: *Harris County, Texas, and the State of Texas v. International Airport Square Investment, Ltd., and Narinder K. Arora;* No. 2008-75341, In the District Court of Harris County, Texas, 55th Judicial District.

Background: The defendants are the owners and operators of a wastewater treatment plan at a motel known as Traveler's Inn at 17607 Eastex Freeway in Humble, Harris County, Texas. The State of Texas and Harris County have alleged that the defendants discharged untreated sewage onto the ground and into the waters of the state, in violation of the Texas Water Code, and discharged treated wastewater with insufficient levels of chlorine to disinfect the effluent properly, in violation of the defendants' wastewater permit.

Nature of the Settlement: This action will be settled by an agreed final judgment in the district court.

Proposed Settlement: The proposed judgment provides for civil penalties and the recovery of attorneys' fees.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment, and written comments on the same, should be directed to Thomas H. Edwards, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548; telephone (512) 463-2012, fax (512) 320-0052.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201005605
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: September 28, 2010

♦ ♦ ♦

Brazos Valley Council of Governments

Public Notice

Request for Proposals for Ryan White Part B, HIV Health and Social Services (State Services), and Housing Opportunities for Persons with AIDS (HOPWA)

On October 7, 2010, the Brazos Valley Council of Governments will release a Request for Proposals (RFP) for Ryan White Part B, HIV Health and Social Services (State Services), and Housing Opportunities for Persons with AIDS (HOPWA) funds to contract for the initial contract year of 2011 - 2012. Proposals are requested from eligible entities in the Central Texas HIV Administrative Service Area to provide health and social services to eligible persons living with HIV/AIDS. Eligible applicants must be public or private nonprofit health care or social service organizations doing business within one of the five Health Service Delivery Areas (HSDAs): Austin, Bryan/College Station, San Angelo, Temple/Killeen, and Waco.

A letter of intent is requested by November 5, 2010. To be considered, proposals must be received no later than 4:00 p.m. on November 18, 2010. A complete set of specifications and documents is available for download at http://hiv.bvcog.org or by calling (979) 595-2830.

TRD-201005626
Crystal Crowell
Manager, HIV Administrative Services
Brazos Valley Council of Governments
Filed: September 29, 2010

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/04/10 - 10/10/10 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/04/10 - 10/10/10 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201005578
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 28, 2010

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning the 2011-2012 Public Charter School Start-Up Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-10-120 from eligible charter schools to provide initial start-up funding for planning and/or implementing charter school activities. This competitive grant opportunity is available for charter schools that meet the federal definition of a charter school, have never received Public Charter Schools Program start-up funds, and are one of the following: (1) a campus charter school approved by its local board of trustees pursuant to the Texas Education Code (TEC), Chapter 12, Subchapter C, on or before October 29, 2010, that submits all required documentation as required

by the RFA and previously described in the "To The Administrator Addressed" letter dated July 20, 2010; (2) an open-enrollment charter school approved by the State Board of Education (SBOE) under the Generation 15 charter application pursuant to the TEC, Chapter 12, Subchapter D; (3) a college, university, or junior college charter school approved by the SBOE pursuant to the TEC, Chapter 12, Subchapter E; or (4) an open-enrollment charter school designated by the commissioner of education on or before December 2, 2010, as a new school under an existing charter. For a charter awarded by the SBOE under the Generation 15 charter application, all contingencies pertaining to the charter application and approval must be cleared and a contract issued to the charter holder prior to applying for grant funding. Charter schools that have been notified of contingencies to be cleared prior to receiving a charter contract should be diligent in working with the TEA to complete this process so that a grant application may be completed and submitted by the deadline date.

Description. The purpose and goals of the 2011-2012 Public Charter School Start-Up Grant program are to increase national understanding of the charter schools by providing financial assistance for the planning, program design, and initial implementation of charter schools; evaluating the effects of such schools, including the effects on students, student achievement, staff, and parents; and expanding the number of high-quality charter schools available to students.

Dates of Project. The 2011-2012 Public Charter School Start-Up Grant will be implemented during the 2011-2012 school year. Applicants should plan for a starting date of no earlier than April 1, 2011, and an ending date of no later than September 30, 2012.

Project Amount. Approximately $5 million is available for funding the 2011-2012 Public Charter School Start-Up Grant. Funding will be provided for approximately 20 projects. Applicants should budget for $250,000 in this grant application. Subsequent continuation funding will be based on the charter school's satisfactory progress toward grant objectives, progress of grant activities, compliance with all grant conditions and requirements, and compliance with all applicable conditions and requirements of the charter. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Applicants' Conference. An applicants' conference will be held on Thursday, October 28, 2010, from 9:00 a.m. to 12:00 p.m. on the Texas Education Telecommunications Network (TETN) available at each regional education service center (ESC) (TETN Event #8245). To locate the nearest TETN facility, applicants should contact the TETN site manager at their regional ESC. A complete list of ESCs, including contact information, is available on the TEA website at http://ritter.tea.state.tx.us/ESC/.

Questions relevant to the RFA may be emailed to Arnoldo Alaniz at CharterSchools@tea.state.tx.us or faxed to (512) 463-9732 prior to Tuesday, October 26, 2010. These questions, along with other information, will be addressed in the TETN presentation. The applicants' conference will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

The entire applicants' conference will be digitally recorded. Prospective applicants who are not able to attend the applicants' conference may request a password and procedures to download the video stream from the TETN site manager at their local ESC.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Jeanne Rankin, Division of Discretionary Grants, TEA, (512) 463-9269. In order to assure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in Part 2: Program Guidelines of the RFA at CharterSchools@tea.state.tx.us. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms by Wednesday, November 10, 2010. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, December 2, 2010, to be eligible to be considered for funding.

TRD-201005612
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 29, 2010

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 8, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 8, 2010.** Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: 2S & J INVESTMENT GROUP, LLC dba Food & Fuel 2; DOCKET NUMBER: 2010-0779-PST-E; IDENTIFIER: RN102039286; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; and 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system; PENALTY: $14,530; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: A-Affordable Vacuum Services and Disposal Site, Inc.; DOCKET NUMBER: 2009-1320-MSW-E; IDENTIFIER: RN104370440; LOCATION: Houston, Harris County; TYPE OF FACILITY: grease trap processing; RULE VIOLATED: 30 TAC §330.203(a) and (b), by failing to meet the conditions regarding the receiving and processing of waste materials; PENALTY: $1,540; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Agrifos Fertilizer, L.L.C.; DOCKET NUMBER: 2010-1035-AIR-E; IDENTIFIER: RN101621944; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: phosphatic fertilizer manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F), and 122.143(4), 40 Code of Federal Regulations (CFR) §63.622(a), Federal Operating Permit (FOP) Number 1252, Special Condition (SC) Numbers 11(a) and 1(E), New Source Review (NSR) Permit Number 4209A and PSD-TX-949, SC Number 2, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the hydrogen fluorides emission rate of 1.06 pounds per hour (lbs/hr) and the total fluorides emission rate of 0.06 lbs/ton phosphorus pentoxide; PENALTY: $7,550; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: American Acryl, L.P.; DOCKET NUMBER: 2010-0922-AIR-E; IDENTIFIER: RN101379287; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 37978/N009, Maximum Allowable Emission Rates, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Bul-Tex Development Corporation; DOCKET NUMBER: 2010-1393-EAQ-E; IDENTIFIER: RN105877310; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: residential development; RULE VIOLATED: 30 TAC §213.4(a)(1) and §213.5(c), by failing to obtain approval of a sewer collection system plan; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: CEMEX Construction Materials South, LLC; DOCKET NUMBER: 2010-0870-IWD-E; IDENTIFIER: RN100249739; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: ready-mixed concrete plant; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG110917, Part III, Permit Requirements Section A, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for total suspended solids (TSS); and 30 TAC §§305.125(17), 319.1, and 319.7(d) and TPDES General Permit Number TXG110917, Part IV, Standard Permit Conditions Number 7(f), by failing to provide monitoring results at intervals specified in the permit; PENALTY: $1,786; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2010-0784-AIR-E; IDENTIFIER: RN100216613; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: oil and gas production plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Permit Number 3131A, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §116.115(c), Permit Number 3131A, SC Number 10, and THSC, §382.085(b), by failing to comply with the one-hour average for the incinerator combustion chamber temperature of 1,700 degrees Fahrenheit when acid gas or other waste gas is directed to the acid gas incinerator; 30 TAC §116.115(c), Permit Number 3131A, SC Number 11, and THSC, §382.085(b), by failing to comply with the hydrogen sulfide feed rate of 235 lbs/hr; 30 TAC §122.144(1), Permit Number 3131A, SC Numbers 10 and 12.B., and THSC, §382.085(b), by failing to maintain the monitoring records for the loss of flare pilot flame and for the incinerator combustion chamber temperature for the required five-year period; and 30 TAC §122.145(2)(A) and §122.147(a)(4) and THSC, §382.085(b), by failing to report all instances of deviations in semiannual deviation reports; PENALTY: $55,350; Supplemental Environmental Project (SEP) offset amount of $22,140 applied to Texas Association of Resource Conservation and Development Areas, Inc. - Clean School Buses; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: Enterprise Products Operating, LLC; DOCKET NUMBER: 2010-0821-AIR-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §101.201(b)(1)(F) and (G) and THSC, §382.085(b), by failing to adequately report emissions events; and 30 TAC §101.20(3) and §116.115(c), Air Permit Number 20698 and PSD-TX-797M1, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,296; SEP offset amount of $5,837 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle

and Equipment Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Fiberglass Specialties, Inc.; DOCKET NUMBER: 2010-0889-AIR-E; IDENTIFIER: RN102536091; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: fiberglass products manufacturing plant; RULE VIOLATED: 30 TAC §§122.121, 122.133(2), and 122.241(b) and THSC, §382.054 and §382.085(b), by failing to submit a renewal application at least six months prior to the expiration of FOP Number O-02422 and continuing to operate the emissions sources at the plant; PENALTY: $9,700; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: City of Fulshear and Fort Bend County Municipal Utility District Number 169; DOCKET NUMBER: 2010-0975-MWD-E; IDENTIFIER: RN105068050; LOCATION: Fulshear, Fort Bend County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014745001, Interim I Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limitations for TSS; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: City of Goodlow; DOCKET NUMBER: 2009-2020-MWD-E; IDENTIFIER: RN101520922; LOCATION: Navarro County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012616001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a)(1), by failing to comply with the permitted effluent limitations for biochemical oxygen demand, TSS, pH, and flow; and 30 TAC §305.125(17) and §319.1 and TPDES Permit Number WQ0012616001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: City of Gregory; DOCKET NUMBER: 2010-1186-PWS-E; IDENTIFIER: RN101384956; LOCATION: Gregory, San Patricio County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.46(e)(3)(B) and THSC, §341.033(a), by failing to have all production, processing, treatment, and distribution facilities under the supervision of a water works operator who holds a Class "C" or higher license; PENALTY: $635; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: Gulf Marine Fabricators, L.P.; DOCKET NUMBER: 2010-1064-MWD-E; IDENTIFIER: RN101513406; LOCATION: San Patricio County; TYPE OF FACILITY: marine fabrication with associated wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012064001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for pH and TSS; PENALTY: $3,930; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(14) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2010-0635-AIR-E; IDENTIFIER: RN104244942; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §115.725(d)(1) and THSC, §382.085(b), by failing to continuously monitor highly reactive volatile organic compound emissions; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: K C Utilities, Inc.; DOCKET NUMBER: 2010-0905-PWS-E; IDENTIFIER: RN101243921; LOCATION: Brazoria County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.42(m), by failing to ensure the facility is enclosed by an intruder-resistant fence; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; and 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: $275; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Franklin Duncan dba Little Lils Septic Tank Service; DOCKET NUMBER: 2010-0998-MLM-E; IDENTIFIER: RN103149407; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: sludge transporting business; RULE VIOLATED: 30 TAC §312.143 and §330.15(c) and the Code, §26.121(a)(1), by failing to dispose of a regulated substance at an authorized disposal facility; and 30 TAC §312.142(a), by failing to obtain authorization to transport grease trap waste; PENALTY: $6,770; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(17) COMPANY: Martin Realty & Land, Inc.; DOCKET NUMBER: 2010-0812-MWD-E; IDENTIFIER: RN102184777; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014081001, Interim I Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen; 30 TAC §305.125(17) and TPDES Permit Number WQ0014081001, Sludge Provisions, by failing to submit a complete sludge report; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0014081001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report (DMR); and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0014081001, Monitoring and Reporting Requirements Number 1, by failing to submit the DMR for the monitoring period ending April 30, 2009; PENALTY: $6,124; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: City of Moody; DOCKET NUMBER: 2010-0999-MWD-E; IDENTIFIER: RN102077278; LOCATION: Moody, McLennan County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010225001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for flow and TSS; PENALTY: $4,650; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: Plank Coatings, Inc.; DOCKET NUMBER: 2010-0828-AIR-E; IDENTIFIER: RN101639078; LOCATION: Odessa, Ector County; TYPE OF FACILITY: dry abrasive cleaning; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to conducting dry abrasive blasting outdoors; PENALTY: $950; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL

OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(20) COMPANY: RTI Hot Mix, Limited; DOCKET NUMBER: 2010-1092-MLM-E; IDENTIFIER: RN101974335; LOCATION: Buda, Hays County; TYPE OF FACILITY: asphalt plant; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain a modification of an Edwards Aquifer aboveground storage tank (AST) facility plant; 30 TAC §334.127(a)(1), by failing to register with the agency two ASTs in existence; and 30 TAC §334.125(b), by failing to make available to the common carrier, a valid current registration certificate; PENALTY: $3,300; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(21) COMPANY: SAGELINE, INC. dba GEORGETOWN FARM SUPPLY; DOCKET NUMBER: 2010-0693-MSW-E; IDENTIFIER: RN105385009; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: farm supply retail store; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent unauthorized disposal of municipal solid waste; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3500; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(22) COMPANY: SAMA, INC. dba E-Z-7 Food Store; DOCKET NUMBER: 2010-0996-PST-E; IDENTIFIER: RN101433241; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(D) and (G) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II VRS; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification; and 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review; PENALTY: $5,806; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: Sathya Enterprises, LLC dba Westwood Shell; DOCKET NUMBER: 2010-1239-PST-E; IDENTIFIER: RN102795556; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment, vapor space manifolding, and dynamic back pressure; PENALTY: $3,834; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: SHAH & SHAH, INC. dba Jamal's Mobil; DOCKET NUMBER: 2010-0894-PST-E; IDENTIFIER: RN100655521; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; 30 TAC §334.42(i), by failing to inspect all sumps, including the dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system; and 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for inspection; PENALTY: $12,906; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Sophia Food Market, Inc. dba Cameron Mini Mart; DOCKET NUMBER: 2010-0816-PST-E; IDENTIFIER: RN102434446; LOCATION: Cameron, Milam County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; PENALTY: $7,406; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: Thirsty Parrot, LLC; DOCKET NUMBER: 2010-0903-PWS-E; IDENTIFIER: RN105232177; LOCATION: Waller County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and THSC, §341.035(a), by failing to submit plans and specifications and obtain written approval from the executive director prior to the construction of a new PWS; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data and obtain approval from the executive director prior to placing a public drinking water well into service; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.41(c)(3)(N), by failing to provide the well with a flow measuring device; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: $423; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2009-1015-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 3908B, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $13,275; SEP offset amount of $5,310 applied to Barbers Hill Independent School District - Energy Efficiency Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(28) COMPANY: Mark E. Rohde dba Turf Masters; DOCKET NUMBER: 2010-1015-LII-E; IDENTIFIER: RN104881222; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(b) and §344.30(a)(2) and the Code, §37.003, by failing to refrain from advertising or representing himself

to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license; PENALTY: $500; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(29) COMPANY: West Hardin County Consolidated Independent School District; DOCKET NUMBER: 2010-1162-MWD-E; IDENTIFIER: RN101518793; LOCATION: Hardin County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011274001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(30) COMPANY: WTG Jameson, LP; DOCKET NUMBER: 2010-0826-AIR-E; IDENTIFIER: RN101246478; LOCATION: Silver, Coke County; TYPE OF FACILITY: natural gas processing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 55477, SC Number 5, and THSC, §382.085(b), by failing to submit an alternate sampling facility design for approval within 180 days after the permit was issued; PENALTY: $3,825; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201005577
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 28, 2010

♦ ♦ ♦

Enforcement Orders

An agreed order was entered regarding ARI ARI LTD dba Desoto Beverages, Docket No. 2008-0445-PST-E on September 20, 2010 assessing $19,471 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange Crush Recyclers, Ltd., Docket No. 2008-1841-AIR-E on September 20, 2010 assessing $3,060 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Janes Pavement Services, Inc., Docket No. 2009-0416-AIR-E on September 20, 2010 assessing $11,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was entered regarding Nhat Q. Tran dba Wallisville Market, Docket No. 2009-0588-PST-E on September 20, 2010 assessing $7,720 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary K. Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thang Huynh, Docket No. 2009-0738-AIR-E on September 20, 2010 assessing $1,120 in administrative penalties with $224 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kevin Vu dba Kevin Vu Poultry Production, Docket No. 2009-0781-MLM-E on September 20, 2010 assessing $2,050 in administrative penalties with $410 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ms. Molly's LLC, Docket No. 2009-1443-PWS-E on September 20, 2010 assessing $6,681 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Beechnut Food Stores Inc., dba Sunshine Food Mart, Docket No. 2009-1525-PST-E on September 20, 2010 assessing $3,119 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-0204, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding METROPLEX LUCKY STAR, LLC. dba Valero Food Mart #3, Docket No. 2009-1759-PST-E on September 20, 2010 assessing $3,689 in administrative penalties with $737 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DELUXE AUTO PARTS, L.L.C., Docket No. 2009-1797-MLM-E on September 20, 2010 assessing $7,350 in administrative penalties with $1,470 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Cynthia Ann Batiste and Leroy Celestine, Docket No. 2009-1816-MLM-E on September 20, 2010 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Collin County, Docket No. 2009-1834-PST-E on September 20, 2010 assessing $3,675 in administrative penalties with $735 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Development, Inc., Docket No. 2009-1892-MWD-E on September 20, 2010 assessing $2,975 in administrative penalties with $595 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Templeton, Docket No. 2009-1975-MSW-E on September 20, 2010 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edinburg, Docket No. 2009-1979-MWD-E on September 20, 2010 assessing $60,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Tatum, Docket No. 2009-1986-MWD-E on September 20, 2010 assessing $10,720 in administrative penalties with $2,144 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTHWEST SHIPYARD, L.P., Docket No. 2009-2011-IHW-E on September 20, 2010 assessing $397,856 in administrative penalties with $79,571 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding G. H. McConnell dba Allied Radiator Service, Docket No. 2009-2012-IHW-E on September 20, 2010 assessing $14,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary K. Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Three Community Water Supply Corporation, Docket No. 2009-2026-MLM-E on September 20, 2010 assessing $996 in administrative penalties with $199 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Indian Petro Corp., Docket No. 2009-2034-MLM-E on September 20, 2010 assessing $16,836 in administrative penalties with $3,367 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BMS Grocery Stores, LLC dba Picnic Food Mart N St Marys, Docket No. 2009-2045-PST-E on September 20, 2010 assessing $8,229 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ata Ur Rahman Khawaja dba R & R Citgo and Shafiq Rehman dba R & R Citgo, Docket No. 2009-2069-PST-E on September 20, 2010 assessing $6,387 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Asuncion Manriquez Galera dba Discount Waste, Docket No. 2010-0080-MLM-E on September 20, 2010 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Morris, Docket No. 2010-0081-MSW-E on September 20, 2010 assessing $4,725 in administrative penalties with $945 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2010-0178-AIR-E on September 20, 2010 assessing $47,084 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding S.S.O.S. Investments INT'L Inc., Docket No. 2010-0197-PST-E on September 20, 2010 assessing $6,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-0620, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alejandro C. Gonzalez, Docket No. 2010-0204-LII-E on September 20, 2010 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arlozelle P. Guess, Docket No. 2010-0209-PST-E on September 20, 2010 assessing $6,300 in administrative penalties with $1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Gas Processing, L.P., Docket No. 2010-0219-AIR-E on September 20, 2010 assessing $4,850 in administrative penalties with $970 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fredericksburg, Docket No. 2010-0228-MWD-E on September 20, 2010 assessing $13,000 in administrative penalties with $2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHUJAT HOLDING COMPANY, Docket No. 2010-0230-PST-E on September 20, 2010 assessing $17,500 in administrative penalties with $3,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federal Emergency Management Agency, Docket No. 2010-0263-MWD-E on September 20, 2010 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SP Utility Company, Inc., Docket No. 2010-0301-PWS-E on September 20, 2010 assessing $1,605 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pettus Municipal Utility District, Docket No. 2010-0302-PWS-E on September 20, 2010 assessing $520 in administrative penalties with $104 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2010-0313-AIR-E on September 20, 2010 assessing $10,336 in administrative penalties with $2,067 deferred.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JUNAID INVESTMENTS, INC., Docket No. 2010-0319-PST-E on September 20, 2010 assessing $2,558 in administrative penalties with $511 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N & K HAMPTON SERVICES, INNC., Docket No. 2010-0326-PST-E on September 20, 2010 assessing $4,226 in administrative penalties with $845 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KOHETTUR, INC. dba Holland Food Market, Docket No. 2010-0327-PST-E on September 20, 2010 assessing $6,237 in administrative penalties with $1,247 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONVENIENCE MART, INC. dba Little York Texaco, Docket No. 2010-0329-PST-E on September 20, 2010 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema Inc., Docket No. 2010-0336-AIR-E on September 20, 2010 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy Gaylon Beyer dba Beyer Dairy #1, Docket No. 2010-0341-AGR-E on September 20, 2010 assessing $3,780 in administrative penalties with $756 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Star Mini Mart, LLC dba Star Mini Mart, Docket No. 2010-0344-PST-E on September 20, 2010 assessing $4,275 in administrative penalties with $855 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patsy Tidwell, Docket No. 2010-0370-MSW-E on September 20, 2010 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF FINA Petrochemicals Limited Partnership, Docket No. 2010-0393-AIR-E on September 20, 2010 assessing $9,775 in administrative penalties with $1,955 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc. dba Aqua Texas, Inc., Docket No. 2010-0398-MWD-E on September 20, 2010 assessing $14,130 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JULIET OPERATING COMPANY, INC. dba Car Care Citgo, Docket No. 2010-0406-PST-E on September 20, 2010 assessing $3,519 in administrative penalties with $703 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Acacia Natural Gas Corporation, Docket No. 2010-0414-AIR-E on September 20, 2010 assessing $14,345 in administrative penalties with $2,869 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K H Jung Investment, Inc. dba Times Market 35, Docket No. 2010-0423-PST-E on September 20, 2010 assessing $5,460 in administrative penalties with $1,092 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2010-0427-AIR-E on September 20, 2010 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas A&M University, Docket No. 2010-0431-PST-E on September 20, 2010 assessing $4,800 in administrative penalties with $960 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Port Arthur, Docket No. 2010-0455-MWD-E on September 20, 2010 assessing $5,160 in administrative penalties with $1,032 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron U.S.A. Inc., Docket No. 2010-0465-IHW-E on September 20, 2010 assessing $1,520 in administrative penalties with $304 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Texas, Inc., Docket No. 2010-0494-PWS-E on September 20, 2010 assessing $546 in administrative penalties with $109 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Grove Independent School District, Docket No. 2010-0515-MWD-E on September 20, 2010 assessing $1,550 in administrative penalties with $310 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Skinny's, LLC dba 7-Eleven Store 142, Docket No. 2010-0522-PST-E on September 20, 2010 assessing $5,090 in administrative penalties with $1,018 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Muenster, Docket No. 2010-0527-MWD-E on September 20, 2010 assessing $3,740 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PANJWANI ENTERPRISES, INC. dba Starstop 18, Docket No. 2010-0539-PST-E on September 20, 2010 assessing $2,200 in administrative penalties with $440 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2010-0587-AIR-E on September 20, 2010 assessing $3,550 in administrative penalties with $710 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Filemon Lopez dba The Yard Man, Docket No. 2010-0589-LII-E on September 20, 2010 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Platinum Plus Enterprises Inc, Docket No. 2010-0603-LII-E on September 20, 2010 assessing $375 in administrative penalties with $75 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ross Construction, Inc., Docket No. 2010-0652-WQ-E on September 20, 2010 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EASTWOOD HILLS MOBILE HOME PARK LIMITED PARTNERSHIP, Docket No. 2010-0702-MWD-E on September 20, 2010 assessing $2,080 in administrative penalties with $416 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Wallinstein Enterprises, Inc. dba New Deal Travel Center, Docket No. 2010-1122-PST-E on September 20, 2010 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Fred Mitchell, Docket No. 2010-1120-WOC-E on September 20, 2010 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tim W. Jennings, Docket No. 2010-1121-WOC-E on September 20, 2010 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201005619

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 29, 2010

♦ ♦ ♦

Notice of Completion of Technical Review Radioactive Material License

APPLICATION. URI, Inc. (URI) has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to Radioactive Material License R03653. Radioactive Material License R03653 authorizes source material recovery. URI conducts recovery of uranium by the in situ leach methodology. This amendment authorizes URI to expand operations at their Rosita Project by authorizing an increase of the licensed area and authorizing an additional remote ion exchange unit in the added licensed area. The Rosita Project facility is located approximately 11 miles Northwest of San Diego off of State Highway 44 in Duval County, Texas on leased, private land, at latitude 27° 49 min 52 sec and longitude 98° 24 min 17 sec. The application was submitted to the Department of State Health Services on August 9, 2006, and was transferred to the TCEQ on July 1, 2007.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft license. The draft license if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license application, Executive Director's technical summary, and draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the following: County Clerk's Office, Duval County Courthouse, 100 W. Gravis, San Diego, Texas 78384, County Clerk's Office, Kleberg County Courthouse, 700 E. Kleberg Avenue, Kingsville, Texas 78363

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. The TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments.

OPPORTUNITY FOR A CONTESTED CASE HEARING. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. The TCEQ may grant a contested case hearing on this application if a written hearing request is timely submitted.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and license number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's de-

cision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html within 30 days from the date of newspaper publication of this notice.

AGENCY CONTACTS AND INFORMATION. If you need more information about this license application or the licensing process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Further information may also be obtained from URI at 405 State Highway 121 Bypass, Building A, Suite 110, Lewisville, Texas 75067 or by calling Mark Pelizza at (972) 219-3337.

TRD-201005618
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 29, 2010

♦ ♦ ♦

Notice of Guidelines for Determining Relationships of Particular Criminal Offenses to Particular Occupational Licenses

The Executive Director of the Texas Commission on Environmental Quality (commission) gives notice to announce the completion and availability of the commission's guidelines relating to the practice of the commission in determining whether a particular crime is related to a particular license and other criterion that affects the decisions of the commission.

Texas Occupations Code, §53.025, requires each licensing authority to issue guidelines relating to the practice of the licensing authority in determining whether a particular crime is related to a particular license and other criterion that affects the decisions of the commission. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority. A state licensing authority that issues guidelines under this section shall file the guidelines with the Texas Secretary of State for publication in the *Texas Register.*

Additionally, 30 Texas Administrative Code §30.35 requires the commission to issue guidelines relating to the practice of the agency in determining whether a particular crime is related to a particular license and other criterion that affects the decisions of the commission. The commission rules also require filing the guidelines with the Texas Secretary of State for publication in the *Texas Register.*

GUIDELINE AVAILABILITY

The required guidelines are available for review on the commission's Web site at *http://www.tceq.state.tx.us/nav/main/business_licensing.html.* Copies of the report may be obtained by contacting Mr. Terry Thompson at (512) 239-6095, by email at *tthompso@tceq.state.tx.us,* or in writing to Mr. Terry Thompson, Texas Commission on Environmental Quality, Occupational Licensing Section, MC 178, P.O. Box 13087, Austin, Texas 78711-3087.

Any questions or comments may be addressed to Ms. Alicia Lee, Staff Attorney, Environmental Law Division, Texas Commission on Environmental Quality, MC 173, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0133.

TRD-201005601
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 28, 2010

♦ ♦ ♦

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 8, 2010.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400, and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 8, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: City of Caddo Mills; DOCKET NUMBER: 2009-2028-MWD-E; TCEQ ID NUMBER: RN101721488; LOCATION: approximately 0.7 miles south of the intersection of State Highway 66 and Farm-to-Market Road 36, Caddo Mills, Hunt County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010425001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, 30 TAC §305.125(1), and TWC, §26.121(a), by failing to comply with permitted effluent discharge limits; PENALTY: $14,800; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Creek Park Corporation; DOCKET NUMBER: 2009-1372-MWD-E; TCEQ ID NUMBER: RN102915691; LOCA-

TION: approximately one mile east of County Road (CR) 600 and approximately 1.5 miles south of the intersection of CR 600 and Farm-to-Market Road 917, Johnson County; TYPE OF FACILITY: wastewater treatment plant and wastewater collection system; RULES VIOLATED: 30 TAC §305.125(5) and TPDES Permit Number WQ0013868001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §319.11(b) and TPDES Permit Number WQ0013868001, Operational Requirements Number 2, by failing to analyze field measurements within the required holding times; and 30 TAC §305.125(4), TWC, §26.121, and TPDES Permit Number WQ0013868001, Permit Condition Number 2.g., by failing to prevent the discharge of sludge to the water in the state; PENALTY: $4,750; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Enterprise Hydrocarbons L.P.; DOCKET NUMBER: 2009-0778-AIR-E; TCEQ ID NUMBER: RN100210277; LOCATION: 802 McKinzie Road, Corpus Christi, Nueces County; TYPE OF FACILITY: gas production facility; RULES VIOLATED: Federal Operating Permit Number O-0869 and General Operating Permit Number 512, Special Condition Number (b)(1), 30 TAC §§122.132(a) and (e), 122.142(c), and 122.503, and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518, by failing to accurately represent the Main Plant Flare and the Carbon Monoxide Flare in the Federal Operating Permit renewal application submitted on January 15, 2007; 40 Code of Federal Regulations, §§60.8, 60.18, 60.632, and 60.482-10(d), 30 TAC §101.20(1), and THSC, §382.085(b), by failing to conduct a performance test of the Main Plant Flare; and 30 TAC §111.111(a)(4)(A)(ii) and THSC, §382.085(b), by failing to maintain a complete flare operating log; PENALTY: $7,920; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Hector Silva, Sr.; DOCKET NUMBER: 2008-0377-PST-E; TCEQ ID NUMBER: RN101737773; LOCATION: 604 West Comal Street, Pearsall, Frio County; TYPE OF FACILITY: two underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.6, by failing to provide written notification to the agency at least 30 days prior to initiating construction activities; and 30 TAC §334.47(a)(2) and §334.55(a)(3) and (b) and TCEQ AO Docket Number 2004-1776-PST-E, Ordering Provision Number 2.a.i., by failing to use qualified personnel possessing the appropriate license or certification for UST removal activities and by failing to properly permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $56,550; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Jerry Spencer, L.P. dba JJS Fastop 294; DOCKET NUMBER: 2009-1250-PST-E; TCEQ ID NUMBER: RN102780103; LOCATION: 5401 Watauga Road, Watauga, Tarrant County; TYPE OF FACILITY: two USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72(3) and (B), by failing to report a suspected release to the agency within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substances within 30 days of discovery; 30 TAC §334.10(b), by failing to have the required UST records maintained, readily accessible, and made available for inspection upon request by agency personnel; 30 TAC §334.51(b)(2)(B) and TWC, §26.3475(c)(2), by failing to equip the UST system with a spill containment device designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container; and 30 TAC §115.246(5) and THSC, §382.085(b), by failing to maintain Stage II records at the station; PENALTY: $20,200; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Metro Mart Inc.; DOCKET NUMBER: 2010-0159-PST-E; TCEQ ID NUMBER: RN100696160; LOCATION: 1900 South Dairy Ashford Street, Houston, Harris County; TYPE OF FACILITY: three USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and (d)(4)(A)(ii)(II) and TWC, §26.3475(a) and (c)(1), by failing to provide proper release detection for the pressurized piping associated with the UST system and by failing to perform an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the UST system; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system including, but not limited to, absence or disconnection of any component that is a part of the approved system; PENALTY: $4,663; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Rod C. Oliver; DOCKET NUMBER: 2008-1893-PST-E; TCEQ ID NUMBER: RN101783389; LOCATION: intersection of North Highway 281 and Highway 37, Three Rivers, Live Oak County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, four USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0048419U for Fiscal Years 1999 - 2007; PENALTY: $5,250; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: Rubens Taddei; DOCKET NUMBER: 2010-0170-LII-E; TCEQ ID NUMBER: RN105860928; LOCATION: 1017 11th Street, Apartment 3, Galveston, Galveston County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration; and 30 TAC §334.52(c), by failing to provide the test results on the backflow prevention device to the local water purveyor and the irrigation system owner within ten business days of the device being tested; PENALTY: $1,244; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Semere Ogbazgi dba Hampton Service Station and Tesfaslassie Ogbazgi dba Hampton Service Station; DOCKET NUMBER: 2010-0479-PST-E; TCEQ ID NUMBER: RN102719168; LOCATION: 3818 North Hampton Road, Dallas, Dallas County; TYPE OF FACILITY: two USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $3,508; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201005602
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 28, 2010

♦ ♦ ♦

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 8, 2010.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400, and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 8, 2010.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Dustin Whaley; DOCKET NUMBER: 2010-0530-PST-E; TCEQ ID NUMBER: RN101805059; LOCATION: 1107 Vega Boulevard, Vega, Oldham County; TYPE OF FACILITY: one underground storage tank (UST) and a former service station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date of December 22, 1998, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.7(d)(1)(A) and (3), by failing to update UST registration information to reflect current ownership within 30 days after the ownership change of January 15, 2007; PENALTY: $3,675; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: Eastex Sand & Materials, Inc.; DOCKET NUMBER: 2009-1579-MSW-E; TCEQ ID NUMBER: RN104399621; LOCATION: 7122 Hickory Hollow Drive, Lumberton, Hardin County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $10,600; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: Fred Martinez dba Tejas Lawn Care; DOCKET NUMBER: 2010-0312-LII-E; TCEQ ID NUMBER: RN105873335; LOCATION: 710 Meadow View Drive, Leander, Williamson County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license; PENALTY: $500; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: George Kuipers; DOCKET NUMBER: 2010-0289-IHW-E; TCEQ ID NUMBER: RN103971909; LOCATION: 1222 Industrial Drive, Royse City, Collin County; TYPE OF FACILITY: former wax manufacturing facility; RULES VIOLATED: 30 TAC §335.62 and §335.503(a) and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and classifications on wastes generated and stored at the facility; and 30 TAC §335.4, by failing to prevent the collection, storage, handling, and disposal of industrial solid waste in a manner which threatened the discharge of industrial solid waste into or adjacent to waters in the state; PENALTY: $6,300; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Gilbert Espinosa Robles dba Robstown Tire Service; DOCKET NUMBER: 2009-0949-PST-E; TCEQ ID NUMBER: RN102716263; LOCATION: 510 Western Avenue, Robstown, Nueces County; TYPE OF FACILITY: two USTs and a former convenience store; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $8,925; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building,

Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Jason Whatley; DOCKET NUMBER: 2010-0068-SLG-E; TCEQ ID NUMBER: RN105845069; LOCATION: 2930 Glencullen Lane, Pearland, Brazoria County; TYPE OF FACILITY: sludge transporter; RULES VIOLATED: 30 TAC §312.142(a), by failing to obtain a sludge transporter registration prior to commencing operations; 30 TAC §312.143 and TWC, §26.121(a)(2), by failing to deposit grease trap waste at a facility authorized to receive such wastes; and 30 TAC §312.147(a), by failing to ensure that waste stored in a mobile closed container is stored for less than four days; PENALTY: $2,650; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Karen Mengelkamp; DOCKET NUMBER: 2010-0493-PST-E; TCEQ ID NUMBER: RN102271921; LOCATION: 11410 South State Highway 36, Jonesboro, Coryell County; TYPE OF FACILITY: four USTs and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.50(a)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances, and by failing to provide a release detection method for the USTs by failing to conduct reconciliation of inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: $4,500; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Matt R. Phillips; DOCKET NUMBER: 2010-0114-LII-E; TCEQ ID NUMBER: RN103591921; LOCATION: 12854 Vickery Drive, Tyler, Smith County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration; PENALTY: $250; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Ronald Triplette dba AAA Triplette Environmental; DOCKET NUMBER: 2010-0097-SLG-E; TCEQ ID NUMBER: RN105378673; LOCATION: 8006 Belbay Street, Houston, Harris County; TYPE OF FACILITY: sludge transporting business; RULES VIOLATED: 30 TAC §312.142(a), by failing to renew an existing TCEQ Sludge Transporter Registration by August 31, 2008, as documented during the October 20, 2009 investigation; and 30 TAC §312.143 and TWC, §26.121(a)(1), by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the waste and the Texas facility has written authorization by permit or registration issued by the executive director to receive wastes, as documented during the October 20, 2009; PENALTY: $7,000; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Wanda Dean; DOCKET NUMBER: 2010-0415-PST-E; TCEQ ID NUMBER: RN102280625; LOCATION: 5733 South Highway 171, Grandview, Johnson County; TYPE OF FACILITY: two inactive USTs and a café; RULES VIOLATED: 30 TAC §334.49(a)(2) and §334.54(c)(1) and TWC, §26.3475(d), by failing to ensure that a corrosion protection system is operating and maintained in a manner that will ensure continuous corrosion protection to all underground components; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access; and 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances which remained in the system did not exceed a depth of 2.4 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; PENALTY: $5,250; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201005603
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 28, 2010

♦ ♦ ♦

Notice of Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility Lone Star Recycling and Disposal Facility Transfer Station Registration Application

APPLICATION. Delta Waste Services, LP, dba Lone Star Recycling & Disposal Facility, P.O. Box 41334, Houston, TX 77241, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration (No. 40249), to construct and operate a Type V municipal solid waste transfer station. The proposed facility, Lone Star Recycling & Disposal Facility Transfer Station will be located at 4107 S Sam Houston Parkway West, Houston, TX 77053, approximately 750 feet south of the Beltway 8 South access road, west of FM 521, and east of the future extension of the Hiram Clarke Road connection to Beltway 8 South in Harris County. This facility is requesting authorization to transfer municipal solid waste which includes household waste, construction and demolition waste, yard waste, and Class 2 and Class 3 industrial solid wastes. The registration application is available for viewing and copying at the Vinson Neighborhood Library, 3810 W. Fuqua, Houston, TX 77047 and may be viewed online at http://clientzone.golder.com/DeltaWaste.

PUBLIC COMMENT/PUBLIC MEETING. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. Comments may also be received if a public meeting is held on the facility. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission,

and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted prior to the notice of final determination. The executive director is not required to file a response to comments.

EXECUTIVE DIRECTOR ACTION. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to reconsider the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

INFORMATION. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to http://www10.tceq.state.tx.us/epic/ecmnts/. Individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from Delta Waste Services, LP at the address stated above or by calling Ms. Lou Ann Lowe, P.E., with Golder Associates at (281) 821-6868.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201005617
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 29, 2010

♦ ♦ ♦

Notice of Water Quality Applications

The following notice was issued on September 17, 2010 through September 24, 2010.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the TPDES Permit No. WQ0000663000, issued to the Dow Chemical Company, P.O. Box 685, La Porte, Texas 77572-0685, which operates the Dow Chemical Company-La Porte Site, a chemical manufacturing facility, with products including methylene diphenidiisocyanate, related polymers, thermoplastic resins, and thermosetting resins, to authorize correction of single grab effluent limitations for biochemical oxygen demand (5-day), total suspended solids, total organic carbon, oil and grease, ammonia nitrogen, organic nitrogen, phenolic compounds, and total phosphorous at Outfall 001. The existing permit authorizes the discharge of process wastewater, storm water, utility wastewater, and domestic wastewater at a daily average flow not to exceed 642,000 gallons per day via Outfall 001 and storm water runoff on intermittent and flow variable basis via Outfalls 002 and 003. The facility is located at 550 Independence Parkway South in the City of La Porte, Harris County, Texas 77571.

HOLMES FOODS INC which operates the Nixon Processing Plant, has applied for a renewal of TCEQ Permit No. WQ0002013000, which authorizes the discharge of utility wastewater (consisting of cooling tower and boiler blowdown) and process wastewater from the Nixon poultry processing facility at a daily average flow not to exceed 1,000,000 gallons per day via irrigation of 341.27 acres of Coastal Bermuda and native grass. The draft permit authorizes the discharge of utility wastewater (consisting of cooling tower and boiler blowdown) and process wastewater from the Nixon poultry processing facility at a daily average flow not to exceed 700,000 gallons per day via irrigation of 341.27 acres of Coastal Bermuda and native grass. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located in the drainage area of Clear Fork Sandies Creek, which flows to Sandies Creek; thence to Guadalupe River Below San Marcos River in Segment No. 1803 of the Guadalupe River Basin.

FARCO MINING INC which operates the Rachal Coal Mine, has applied for a renewal of TPDES Permit No. WQ0003229000, which authorizes the discharge of storm water from post-mining areas via Outfalls 101 and 102 on an intermittent and flow variable basis. The existing permit authorizes the discharge of storm water from the active mining areas via Outfalls 001 and 002 and post-mining areas via Outfalls 101 and 102 on an intermittent and flow variable basis. The facility is located adjacent to Farm-to-Market Road 1472 at a point approximately 34 miles northwest of the intersection of Farm-to-Market Roads 1472 and 3338, and northwest of the City of Laredo, Webb County, Texas 78045.

KEMPNER WATER SUPPLY CORPORATION which proposes to operate the Cliff & Eldine Poe Regional Water Treatment Plant, has applied for a new permit, proposed Permit No. WQ0004929000, to authorize the disposal of treated wastewater at a daily average flow not exceed 2,000 gallons per day via irrigation of 1.25 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site will be located at 10441 Cedar Knob Church Road, approximately 7 miles northwest of Salado and 0.6 mile west of the intersection of Union Grove Road and Farm-to-Market Road 2484 in the City of Salado, Bell County, Texas 76571.

CITY OF DENISON has applied for a renewal of TPDES Permit No. WQ0010079005, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 412,000 gallons per day. The facility is located at 137 North Warehouse Road, on the east side of Grayson County Airport, approximately 100 feet due north of the intersection of Warehouse Road and Anderson Street, 1.1 miles northwest of the intersection of Farm-to-Market Road 691 and Farm-to-Market Road 1417, and approximately 8 miles southwest of the City of Denison in Grayson County, Texas 75020.

EL PASO WATER UTILITIES PUBLIC SERVICE BOARD has applied for a renewal of TPDES Permit No. WQ0010408009, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 17,500,000 gallons per day. The facility is located at the intersection of Interstate Highway 10 and Executive Center Boulevard in El Paso County, Texas 79922.

CITY OF TRINITY has applied for a renewal of TPDES Permit No. WQ0010617001, which authorizes the discharge of treated domestic

wastewater at a daily average flow not to exceed 610,000 gallons per day. The facility is located approximately 1,500 feet east-southeast of the intersection of Pagoda Road (Farm-to-Market Road 35) and Ramey Street in southeast Trinity in Trinity County, Texas 75862.

TRINITY RIVER AUTHORITY OF TEXAS has applied for a renewal of TPDES Permit No. WQ0011310001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 21 Wolf Creek Park Road, approximately 0.3 mile from Farm-to-Market Road 224 at a point approximately 2.7 miles southeast of the intersection of State Highway 156 and Farm-to-Market Road 224 in San Jacinto County, Texas 77331.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011538001 issued to White Oak Bayou Joint Powers Board to authorize the addition of the pretreatment section to the draft permit. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located on the north side of White Oak Bayou at 15201 Philippine Street within Jersey Village, approximately 500 feet southeast of the intersection of Equador and Philippine Street in Jersey Village in Harris County, Texas 77040.

THE ADELPHI ORGANIZATION AND ADELPHI COMMUNITY COOPERATIVE have applied for a renewal of TPDES Permit No. WQ0012227001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located on an unnamed county road, approximately one mile east of State Highway 34, and approximately five miles south of the City of Quinlan in Hunt County, Texas 75474.

THE FALLS MUNICIPAL UTILITY DISTRICT has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013018001 to authorize an additional phase not to exceed 35,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 1.75 miles east-northeast of the intersection of Farm-to-Market Road 109 and Zimmerscheidt Road and approximately 9.5 miles north of the City of Columbus in Colorado County, Texas 78950.

CITY OF MULLIN has applied for a renewal of TPDES Permit No. WQ0013758001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 3,100 feet south of the intersection of State Highway 183 and Farm-to-Market Road 573 and approximately 1,900 feet east of the Farm-to-Market Road 573 in the City of Mullin in Mills County, Texas 76864.

CITY OF AVINGER has applied for a renewal of TPDES Permit No. WQ0014399001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 0.4 mile north of the intersection of State Highway 155 and State Highway 49 in the City of Avinger in Cass County, Texas 75630.

KENROC LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014973001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility will be located at 29909 Farm-to-Market Road 2978, approximately 2,496 feet south of the intersection of Woodlands Parkway and Farm-to-Market Road 2978 in the City of Magnolia in Montgomery County, Texas 77354.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201005616
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 29, 2010

♦ ♦ ♦

Texas Health and Human Services Commission

Notification of Consulting Procurement

I. Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for consultant services to assist the State in assuring the effective performance of the Medicaid Claims/Primary Care Case Management (PCCM), Pharmacy Claims and Rebate Administration (PCRA) vendor via independent verification and validation services (RFP #529-11-0010). HHSC seeks to contract with a single qualified vendor to fulfill the requirements pursuant to this RFP.

II. The primary objectives for this procurement are to assist HHSC in administering the Medicaid Claims/PCCM/PCRA Administrator by:

* Assuring the accurate, complete and timely delivery of technology services;

* Monitoring and reporting on the Medicaid Claims/PCCM/PCRA Administrator vendor performance, specifically related to quality, risk management and issues resolution on specified technology projects; and

* Exploring opportunities to maximize efficiency and reduce costs in the administration of the affected State programs.

The RFP is located in full on HHSC's Business Opportunities Page under link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_home.shtml. HHSC also posted notice of the procurement on the Texas Marketplace on September 20, 2010.

III. The successful Vendor will be evaluated on demonstrated competence, knowledge and qualifications, and the reasonableness of the proposed fee for the services, all as detailed in the RFP.

IV. Texas Health and Human Services Commission's Sole Point-of-Contact for Procurement:

Peggie J. Laser, Procurement Manager

Texas Health and Human Services Commission

Enterprise Contracts and Procurement Services (ECPS)

909 West 45th Street; Building 1

Mail Code: 2020

Austin, Texas 78751

Telephone: (512) 206-5278

Fax: (512) 206-5475

E-mail: peggie.laser@hhsc.state.tx.us

V. All questions regarding the RFP must be sent in writing to the above-referenced contact by 2:00 p.m. Central Time on October 11, 2010. HHSC will post all written questions received with HHSC's responses

on its website on October 18, 2010, or as they become available. All proposals must be received at the above-referenced address on or before 2:00 p.m. Central Time on October 25, 2010. Proposals received after this time and date will not be considered.

VI. All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-201005523

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: September 23, 2010

♦ ♦ ♦

Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Effective Environmental Inc.	L06322	Mesquite	00	09/07/10
Throughout TX	Universal Wireline Inc.	L06355	Snyder	00	09/08/10

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	47	08/30/10
Anderson	National Oilwell Varco L.P.	L06094	Anderson	03	09/08/10
Arlington	Arlington Memorial Hospital dba Texas Health Arlington Memorial Hospital	L02217	Arlington	97	08/27/10
Arlington	Columbia Medical Center of Arlington Subsidiary L.P. dba Medical Center of Arlington	L02228	Arlington	71	09/03/10
Austin	Austin Radiological Association	L00545	Austin	165	09/15/10
Austin	Austin Texas Radiation Oncology Group P.A. dba Austin Cancer Centers	L01761	Austin	63	08/25/10
Austin	Austin Heart PLLC dba Austin Heart	L04623	Austin	69	09/03/10
Austin	St. David's Healthcare Partnership L.P., LLP	L06335	Austin	01	09/03/10
Beaumont	Wayne S. Margolis, M.D., P.A.	L06049	Beaumont	02	08/30/10
Brownsville	Columbia Valley Healthcare System L.P. dba Valley Regional Medical	L02274	Brownsville	44	09/08/10
Cedar Park	Cedar Park Health System L.P. dba Cedar Park Regional Medical Center	L06140	Cedar Park	04	09/14/10
Cleburne	Johns Manville	L01482	Cleburne	22	09/13/10
Conroe	CHCA Conroe L.P. dba Conroe Regional Medical Center	L01769	Conroe	82	09/03/10
Conroe	Sadler Clinic/Montgomery County Management Company	L04899	Conroe	29	09/10/10
Dallas	Methodist Hospitals of Dallas Radiology Services	L00659	Dallas	79	09/09/10
Dallas	Cardinal Health	L05610	Dallas	19	09/10/10
Dallas	Comprehensive Cardiac & Vascular Interventional Group	L06187	Dallas	02	08/30/10
El Paso	El Paso Healthcare System Ltd. dba Del Sol Medical Center	L02551	El Paso	55	09/10/10
El Paso	East El Paso Physicians Medical Center LLC	L05676	El Paso	26	08/25/10
Fort Worth	Heart Center of North Texas P.A.	L05338	Fort Worth	14	09/07/10
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	28	08/27/10
Grapevine	Numed Imaging Centers Inc.	L05016	Grapevine	20	09/03/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	155	08/27/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	156	09/03/10
Houston	Rice University	L04639	Houston	12	08/30/10
Houston	Methodist Health Centers dba Methodist Willowbrook Hospital	L05472	Houston	35	09/10/10
Houston	Houston Northwest Operating Company LLC dba Houston Northwest Medical Center	L06190	Houston	08	09/03/10
Houston	Sightline West Houston IMRT LLC dba Sightline West Houston	L06299	Houston	01	08/30/10

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Humble	Memorial Hermann Hospital Systems dba Memorial Hermann Northeast	L02412	Humble	84	08/27/10
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	83	09/08/10
La Porte	E. I. Dupont De Nemours and Company	L00314	La Porte	86	09/07/10
Lubbock	University Medical Center	L04719	Lubbock	114	09/10/10
Lubbock	Covenant Health System dba Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	49	09/03/10
McAllen	Columbia Rio Grande Healthcare L.P.	L03288	McAllen	50	09/10/10
Mesquite	Mesquite Heart Center P.A.	L05132	Mesquite	16	08/31/10
Orange	Invista Inc.	L05777	Orange	07	08/30/10
San Angelo	Shannon Medical Center	L02174	San Angelo	60	08/30/10
San Angelo	Shannon Clinic	L04216	San Angelo	46	09/10/10
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	188	09/15/10
San Antonio	Methodist Healthcare System of San Antonio Ltd., LLP	L00594	San Antonio	277	08/26/10
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	122	09/02/10
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	123	09/10/10
San Antonio	South Texas Cardiovascular Consultants PLLC	L03833	San Antonio	32	09/03/10
San Antonio	VHS San Antonio Imaging Partners L.P. dba Baptist M&S Imaging Centers	L04506	San Antonio	74	08/26/10
San Antonio	Hector L. Nevarez, M.D.	L04698	San Antonio	05	09/07/10
San Marcos	Texas State University - San Marcos	L03321	San Marcos	31	09/07/10
Stafford	Aloki Enterprise Inc.	L06257	Stafford	06	09/14/10
Texarkana	Christus Health Ark-La-Tex dba Christus Saint Michael Health System	L04805	Texarkana	24	09/03/10
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	81	08/30/10
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital The Woodlands	L03772	The Woodlands	82	09/03/10
Throughout TX	Kleinfelder Central Inc.	L01351	Austin	71	09/08/10
Throughout TX	Gessner Engineering LLC	L03733	Brenham	21	09/08/10
Throughout TX	Rock Engineering and Testing Laboratory Inc.	L05168	Corpus Christi	10	09/13/10
Throughout TX	Reed Engineering Group Inc.	L04343	Dallas	17	09/07/10
Throughout TX	Component Sales and Service Inc.	L02243	Houston	29	09/08/10
Throughout TX	Wood Group Logging Services Inc.	L05262	Houston	38	09/07/10
Throughout TX	E&P Wireline Services LLC	L05738	Midland	19	09/13/10
Throughout TX	Geoinstruments Logging LLC	L06160	Nacogdoches	01	09/13/10
Throughout TX	Cardinal Surveys Company	L00065	Odessa	75	09/09/10
Throughout TX	Southwest Research Institute	L00775	San Antonio	81	09/09/10
Throughout TX	Arias & Associates Inc.	L04964	San Antonio	38	09/09/10
Throughout TX	Weaver Services Inc. dba WSI Cased Hole Specialist	L01489	Snyder	34	09/08/10
Throughout TX	BJ Services Company U.S.A.	L02684	Tomball	67	09/09/10
Tyler	East Texas Medical Center	L00977	Tyler	146	08/31/10
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	158	08/30/10

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Deer Park	Akzo Nobel Polymer Chemicals LLC	L04372	Deer Park	14	09/07/10
Throughout TX	Rodriguez Engineering	L04700	Austin	17	09/08/10
Throughout TX	Professional Service Industries Incorporated	L04938	Clute	10	09/09/10
Throughout TX	Material Inspection Technology Inc.	L05672	Houston	36	09/07/10
Throughout TX	Newpark Environmental Services LLC	L04999	Winnie	13	09/08/10

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Smith Pipe of Abilene	L04992	Abilene	05	09/07/10
Austin	Texas Cardiovascular Consultants P.A.	L05246	Austin	38	08/27/10
Georgetown	Southwestern University at Georgetown	L00372	Georgetown	23	09/10/10
Lufkin	Christopher R. Gill, M.D.	L05725	Lufkin	04	09/08/10
Throughout TX	Spectro Analytical Instruments Inc.	L02788	Austin	53	08/31/10

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-201005546
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: September 24, 2010

♦ ♦ ♦

Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of SILVERBACK, LLC, a domestic third party administrator. The home office is FORT WORTH, TEXAS.

Application of MIDWEST DENTAL BENEFITS, INC. a foreign third party administrator. The home office is MINNEAPOLIS, MINNESOTA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register,* addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201005609
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 29, 2010

♦ ♦ ♦

Texas State Library and Archives Commission

Correction of Error

The Texas State Library and Archives Commission adopted an amendment to 13 TAC §7.125 in the September 17, 2010, issue of the *Texas Register* (35 TexReg 8495). An error occurs in the first sentence of the preamble. The words "Justice and Municipal Courts (JC)" should be "Public Junior Colleges (JC)." The corrected sentence reads as follows:

"The Texas State Library and Archives Commission is adopting an amendment to §7.125 regarding local government retention schedules for the records of Public School Districts (SD) and Public Junior Colleges (JC) with changes to the proposed text...."

TRD-201005622

♦ ♦ ♦

Lone Star Rail District

Notice of Request for Proposals

Lone Star Rail District (Rail District) seeks proposals from qualified consultants to provide an alternatives alignment analysis for a poten-

tial freight railroad relocation, related studies, and documentation sufficient to present to the Surface Transportation Board.

The Request for Proposals (RFP) is available on the Rail District website: www.LoneStarRail.com. Responses to the RFP must be received by the Rail District no later than 2:00 p.m. CDT, October 25, 2010 to be considered.

TRD-201005620
Ross E. Milloy
Interim Executive Director
Lone Star Rail District
Filed: September 29, 2010

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1279 "Hit the Jackpot"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1279 is "HIT THE JACKPOT". The play style is "multiple games".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1279 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 1279.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $7.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $2,000, $70,000, DIAMOND SYMBOL, POT OF GOLD SYMBOL, 7 SYMBOL, STAR SYMBOL, COINS SYMBOL, GRAPE SYMBOL, BELL SYMBOL, CHERRY SYMBOL, CROWN SYMBOL, MELON SYMBOL, HORSESHOE SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and MONEY SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1279 - 1.2D

PLAY SYMBOL	CAPTION
$7.00	SEVEN$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$2,000	TWO THOU
$70,000	70 THOU
DIAMOND SYMBOL	DMD
POT OF GOLD SYMBOL	PTGD
7 SYMBOL	SEVN
STAR SYMBOL	STAR
COINS SYMBOL	COINS
GRAPE SYMBOL	GRPE
BELL SYMBOL	BELL
CHERRY SYMBOL	CHRY
CROWN SYMBOL	CRN
MELON SYMBOL	MELN
HORSESHOE SYMBOL	SHOE
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	THN
14	FRN
15	FTN
16	SXT
17	SVT
18	EGN
19	NIT
20	TWY
21	TTO
22	TTW
23	TTR
24	TTF
25	TYF

26	TTS
27	TYS
28	TTE
29	TTN
30	TRY
MONEY SYMBOL	DBL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $7.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $2,000 or $70,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1279), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1279-0000001-001.

K. Pack - A pack of "HIT THE JACKPOT" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HIT THE JACKPOT" Instant Game No. 1279 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "HIT THE JACKPOT" Instant Game is determined once the latex on the ticket is scratched off to expose 56 (fifty-six) Play Symbols. For GAME 1: If a player reveals three matching amounts play symbols, the player wins that amount. For GAME 2: If a reveals three matching play symbols within ROW, the player wins the PRIZE shown in corresponding legend. For GAME 3: If a player reveals three matching play symbols in any one row, column or diagonal, the player wins the PRIZE shown. For GAME 4: The player adds the numbers in each ROW and if the total of the ROW equals 7 or 11, the player wins the PRIZE shown for that ROW. For GAME 5: If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "MONEY" play symbol, the player wins DOUBLE the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 56 (fifty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 56 (fifty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 56 (fifty six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 56 (fifty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The top prize symbol will appear on every ticket unless otherwise restricted.

C. GAME 1: No three pairs of matching play symbols.

D. GAME 1: No four (4) or more matching play symbols.

E. GAME 1: This game can only win one (1) time.

F. GAME 2: No duplicate non-winning ROWS in any order.

G. GAME 2: No three non-winning matching play symbols will appear either vertically or diagonally.

H. GAME 3: There will be only one (1) occurrence of three (3) matching symbols appearing in a row, column or diagonal on winning games.

I. GAME 4: No duplicate non-winning prize symbols in this game.

J. GAME 4: No duplicate non-winning ROWS in any order.

K. GAME 4: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

L. GAME 5: No duplicate WINNING NUMBERS play symbols on a ticket.

M. GAME 5: No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

N. GAME 5: The "MONEY" (doubler) play symbol will appear on winning tickets only as dictated by the prize structure.

O. GAME 5: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

P. GAME 5: No prize amount in a non-winning spot will correspond with the play symbol (i.e. 7 and 7).

Q. GAME 5: No four or more matching non-winning prize symbols in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "HIT THE JACKPOT" Instant Game prize of $7.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HIT THE JACKPOT" Instant Game prize of $2,000 or $70,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HIT THE JACKPOT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HIT THE JACKPOT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "HIT THE JACKPOT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1279. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1279 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	403,200	12.50
$10	470,400	10.71
$15	201,600	25.00
$20	235,200	21.43
$50	67,200	75.00
$100	35,700	141.18
$500	2,646	1,904.76
$2,000	68	74,117.65
$70,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.56. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1279 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1279, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201005575
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 27, 2010

♦ ♦ ♦

Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §13.064 (Vernon 2007 & Supp. 2009) (PURA), the Office of Public Utility Counsel (Office) will conduct its annual public hearing.

The public hearing will be held on the date and time and at the location indicated below.

Friday, November 12, from 7:00 - 9:00 a.m.

Shilo Inn Suites

3701 South W.S. Young Drive

Killeen, Texas 76542

All interested persons are invited to attend and provide input.

The Office represents the interest of residential and small commercial consumers in electric and telecommunications proceedings before the Public Utility Commission, Electric Reliability Council of Texas, state and federal courts, and federal regulatory bodies. The Office seeks public input to assist the Office in developing a plan of priorities, and seeks comments on the Office's functions and effectiveness.

Contact Danny Bivens, P.O. Box 12397, Austin, TX 78711-2397 or (512) 936-7500 or 1-(877)-839-0363 for further information.

TRD-201005587
Sheri Givens
Public Counsel
Office of Public Utility Counsel
Filed: September 28, 2010

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 17, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38690 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City of Glenn Heights, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38690.

TRD-201005560
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 24, 2010

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 23, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38715 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the city limits of Lake Dallas and Midlothian, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38715.

TRD-201005563
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 24, 2010

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 27, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 38733 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the municipality of Stafford, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) 1-800-735-2989. All inquiries should reference Project Number 38733.

TRD-201005593
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 2010

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 23, 2010, Talk America, Inc. d/b/a Cavalier Telephone filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60118. Applicant seeks approval to reflect a change in ownership/control.

The Application: Application of Talk America, Inc. d/b/a Cavalier Telephone for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 38713.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 15, 2010. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38713.

TRD-201005564
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 24, 2010

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission (commission) of Texas on September 24, 2010, for designation as an eligible telecommunications carrier (ETC) for the limited purpose of offering Lifeline Service to qualified households pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of i-wireless, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418 for Lifeline Support; Docket Number 38725.

The Application: i-wireless seeks ETC designation only for the limited purpose to provide Lifeline service to qualifying Texas consumers. i-wireless is not seeking authority to be eligible to receive Federal Universal Service Fund high cost support. Pursuant to 47 United States Code §214(e), the Public Utility Commission of Texas, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. i-wireless is a reseller of commercial mobile radio service throughout the United States. i-wireless provides pre-paid wireless telecommunications services to consumers by using the Sprint-Nextel network on a wholesale basis to offer nationwide service.

i-wireless is requesting ETC designation for the non-rural wires centers of AT&T Texas and Verizon as shown in Exhibit 7 of the application. i-wireless does not seek ETC designation in the service territory of any rural incumbent local exchange carrier.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is October 28, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 38725.

TRD-201005588
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 2010

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on September 16, 2010, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rules 26.417 and 26.418, respectively.

Docket Title and Number: Application of Texas Hearing Services Corporation d/b/a Texas Hearing and Telephone for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule 26.418 and Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule 26.417. Docket Number 38684.

The Application: Texas Hearing and Telephone (Texas Hearing) requests ETC/ETP designation to be eligible for federal and state universal service funds to assist it in providing universal service in Texas. Pursuant to P.U.C. Substantive Rule 26.418 and P.U.C. Substantive Rule 26.417, the commission, designates qualifying common carriers as ETCs and ETPs for service areas designated by the commission. The company seeks ETC/ETP designation within 264 AT&T Texas wire centers and their associated exchanges and study area and within 79 Verizon Southwest wire centers and their associated exchanges and study area. A list of the wire centers in the designated service areas is described in Attachment A to the application. The Company holds Service Provider Certificate of Operating Authority Number 60858.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is October 20, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 38684.

TRD-201005559
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 24, 2010

♦ ♦ ♦

Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 24, 2010, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one thousand-block of numbers on behalf of its customer, Shared Technologies, in the Allen rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources for Allen Rate Center, Docket Number 38728.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free

at 1-888-782-8477 no later than October 15, 2010. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38728.

TRD-201005590
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 2010

♦ ♦ ♦

Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 24, 2010, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of 10 thousand-blocks of numbers on behalf of its customer, Texas Instruments, in the Dallas rate center.

Docket Title and Number: Petition of AT&T Texas for Waiver of Denial of Numbering Resources for Dallas Rate Center, Docket Number 38731.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 15, 2010. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 38731.

TRD-201005591
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 2010

♦ ♦ ♦

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed CREZ Transmission Line Circuit Project

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 24, 2010, to amend a certificate of convenience and necessity (CCN) for a proposed Competitive Renewable Energy Zone (CREZ) transmission line circuit project in Taylor and Callahan Counties, Texas.

Docket Style and Number: Application of Electric Transmission Texas to amend a Certificate of Convenience and Necessity for the Electric Transmission Texas, LLC (ETT) Abilene East to AEP Texas North Company (AEP TNC) Putnam 138-kV CREZ Transmission Circuit Project in Taylor and Callahan Counties. SOAH Docket Number 473-11-0434; PUC Docket Number 38423.

The Application: Electric Transmission Texas, LLC requests to amend its CCN for a proposed project identified as the ETT Abilene East to AEP TNC Putnam 138-kV Transmission Circuit Project (project). The proposed project is primarily a second circuit being added to two existing double-circuit capable transmission lines of AEP Texas North Company, the TNC Abilene East to Abilene South 138-kV transmission line and the TNC Abilene Plant to Putnam 69-kV transmission line. However, there are some sections of the line that will require new structures to be added to accommodate the second circuit. The proposed project is described in the ERCOT CREZ Transmission Optimization Study as the "upgrade Abilene South to Leon 138-kV line." However, the amended application for the proposed project reflects ERCOT-recommended modifications of the CREZ default project that was initially assigned by the commission to AEP TNC, as well as the change in the transmission service provider responsible for the project to ETT. The preferred route for the proposed project is approximately 32 miles in length and is proposed to be constructed on steel single-pole towers. The applicant's estimated cost of the project is $14,713,120. The application includes a proposed route which uses or parallels existing transmission line right-of-way for its entire length. Any route presented in the application could, however, be approved by the commission.

Pursuant to the Public Utility Regulatory Act §39.203(e), the commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission.

In Docket Number 33672, the commission determined that the transmission facilities identified in the final order were necessary to deliver to customers renewable energy generated in the CREZs. The Abilene East to Putnam 138-kV transmission-line project, which was formerly the upgrade of Abilene South to Leon 138-kV project and the subject of this application, was specifically identified in that order as necessary facilities. In Docket Number 36146, AEP TNC was selected as the responsible entity and was ordered to upgrade the subject transmission-line project. The application includes ETT's request filed on Friday, September 24, 2010, that the commission approve the proposed reassignment of the project from AEP TNC to ETT. The estimated date to energize facilities for this transmission line is May 4, 2012.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is September 23, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference SOAH Docket Number 473-11-0434 and PUC Docket Number 38423.

TRD-201005592
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 2010

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 23, 2010, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Brownsville Navigation District). Docket Number 38716.

The Application: The application encompasses an 97.884-acre tract of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Eduardo Campirano from the Brownsville Navigation District requesting BPUB to provide electric utility service to the Olmito switchyard located on US 77/83 Expressway and North Old Alice Road. The estimated cost to BPUB to provide service to this proposed area is $75,893.05. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than October 18, 2010, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 38716.

TRD-201005562
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 24, 2010

♦ ♦ ♦

Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on September 24, 2010, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Brownsville ISD). Docket Number 38727.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company, formerly known as Central Power & Light, and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Brett Springston, Superintendent of Schools for Brownsville Independent School District, requesting BPUB to provide electric utility service to one proposed middle school and four proposed elementary schools located on 76.049 acres of land. The estimated cost to BPUB to provide service to this proposed area is $252,239.46. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than October 15, 2010, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 38727.

TRD-201005589
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 2010

♦ ♦ ♦

Notice of Filing for Enforcement of Commission Order

Notice is given to the public of a request filed with the Public Utility Commission of Texas on September 17, 2010 for enforcement of commission order and request to close proceeding.

Docket Style and Number: Filing of Luminant Generation Company LLC to Establish Date to Transfer Electric Service in Compliance with Docket Number 30037, Docket Number 38275.

The Application: Rusk County Electric Cooperative (Rusk County) filed a request with the commission for enforcement of commission order and request to close proceeding. Rusk County alleges that Luminant Generation Company, LLC (Luminant) has failed to comply with the commission's order in Docket Number 30037.

The commission's order on rehearing in Docket Number 30037, affirmed the commission's findings that Luminant Generation is in violation of Public Utility Regulatory Act §31.002(10) when it provides electric service to Luminant Mining. Ordering paragraph number 3 ordered Luminant to file within 30 days of the date of the order a detailed plan describing the manner and timing of transferring the retail electric service for the Beckville-Tatum mining load over to Rusk County. The instant proceeding, Docket Number 38275, was established for the filing of this plan and the eventual termination of the Rusk County complaint proceedings. Rusk County requests that the commission find that the parties are in disagreement, and that the commission should terminate this proceeding and require Luminant Generation, by a date certain, to transfer electric service and to cease the illegal provision of retail electric service to Luminant Mining Company.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 38275.

TRD-201005561
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 24, 2010

♦ ♦ ♦

Texas State Soil and Water Conservation Board

Request for Proposals

PROPOSALS DUE: November 19, 2010

INTRODUCTION

This request for proposals (RFP) provides instructions and guidance for applicants seeking funding under the Clean Water Act (CWA) §319(h) Nonpoint Source (NPS) Grant Program in Texas. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the Texas State Soil and Water Conservation Board (TSSWCB) under the authorization of CWA §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals and objectives stated in the Texas Nonpoint Source Management Program. This document can be accessed online at http://www.tsswcb.state.tx.us/files/docs/nps-319/npsmgmtplans/2005mgmtprogram.pdf.

The types of agricultural and silvicultural NPS pollution prevention and abatement activities that can be funded with §319(h) grants include the following: implementation of nine-element watershed pro-

tection plans (WPPs) and the NPS portion of Total Maximum Daily Load (TMDL) Implementation Plans (I-Plans), surface water quality monitoring, data analysis and modeling, demonstration of innovative best management practices (BMPs), technical assistance to landowners for conservation planning, public outreach/education, development of nine-element WPPs including the formation and facilitation of stakeholder groups, and monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding. §The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration and education projects within the boundaries of impaired or threatened watersheds as well as projects in unimpaired watersheds. The 2008 Texas Water Quality Inventory and 303(d) List and the draft 2010 Texas Integrated Report describe the current water quality conditions for waterbodies in the state. All proposals must focus on the restoration and protection of water quality. Up to $2 million of the TSSWCB's FY2011 CWA §319(h) grant will be eligible for this RFP. Approximately $1.2 million will be targeted to implementation and education and approximately $800,000 will be targeted to watershed planning and assessment. No more than 10% of these funds may be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for funding.

Project proposals should, where applicable, stress interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and stress public participation. Examples of project proposals previously funded by TSSWCB are available at http://www.tsswcb.state.tx.us/managementprogram/browseactive.

This RFP does not set a maximum or minimum amount for individual projects; however, project funding generally ranges between $100,000 and $400,000 for a 3-year project. The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement. The cooperating entity will be reimbursed up to 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The 40% match must be from non-federal sources and should be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Quarterly progress and final reports are the minimum project reporting requirements. Deliverables for general distribution (i.e., videos, news releases, literature) will be submitted to EPA for approval through the TSSWCB. All projects that include an environmental data collection component (water quality monitoring, modeling, bacterial source tracking, etc.) must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and EPA. Project budgets and timelines should account for the development and review of QAPPs accordingly. More information on QAPPs and the TSSWCB Environmental Data Quality Management Plan is available at http://www.tsswcb.state.tx.us/quality.

TSSWCB PRIORITIES

For this FY2011 RFP, the following priorities have been identified. Proposals that do not focus on these priorities are still welcomed. All things being equal between proposals, those proposals that do focus on these priorities have a greater probability of being selected.

Priority Project Activities

* Implement WPPs and TMDL I-Plans (See priority areas listed below).

* WPP Development Initiatives (See priority areas listed below), which include activities such as formation of watershed groups, water quality data collection and analysis. More information on developing WPP's is available at http://www.tsswcb.state.tx.us/wpp.

* Conserve healthy watersheds with a goal to protect high quality waters and prevent future water quality impairments through EPA's Healthy Watershed Initiative (http://water.epa.gov/polwaste/nps/watershed/index.cfm).

* Implement components of the Texas Coastal NPS Pollution Control Program in the Coastal Management Zone (http://www.tsswcb.state.tx.us/coastalnps)

* Support use of federal Farm Bill Programs through Cooperative Conservation in impaired watersheds.

* Demonstration projects and or development of statewide education programs.

* Ambient surface water quality monitoring to verify Category 5c impairments.

* Conduct Recreational Use Attainability Analyses.

Priority Areas for WPP and TMDL Implementation Projects

WPPs

• Arroyo Colorado

• Buck Creek

• Dickinson Bayou

• Granbury Lake

• Hickory Creek

• Leon River

• Pecos River

• Plum Creek

TMDLs

• Adams and Cow Bayous (bacteria and dissolved oxygen)

• Aquilla Reservoir (atrazine)

• Gilleland Creek (bacteria)

• E.V. Spence Reservoir (salinity)

• Lake O' the Pines (dissolved oxygen through phosphorus)

• Lower San Antonio River (bacteria)

• North Bosque River (nutrients)

• Upper Guadalupe River (bacteria)

For detailed information on these completed WPPs and adopted TMDLs, including links to the published documents, see http://www.tsswcb.state.tx.us/watersheds.

Priority Areas for WPP Development Initiatives

* Watersheds Prioritized by the Southeast and South Central Texas Regional Watershed Coordination Steering Committee (http://www.tsswcb.state.tx.us/cwp)

* Sulphur River Basin (Basin 3)

• White Oak Creek (Segment 0303B)

* Sabine River Basin (Basin 5)

• Upstream and exclusive of Toledo Bend Reservoir (Segment 0504)

* Colorado River Basin (Basin 14)

• Downstream and exclusive of O.H. Ivie Reservoir (Segment 1433)

• Upstream and exclusive of Lake Travis (Segment 1404)

• Exclusive of Pecan Bayou (Segments 1417, 1431, 1432, 1418, 1419, 1420)

• Exclusive of Brady Creek (Segment 1416A)

• Inclusive of Pedernales River (Segment 1414)

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local municipal and county governments and other political subdivisions of the State, educational institutions, non-profit organizations, and state and federal agencies. Private organizations, for profit, may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS

Submitted proposals will be reviewed, scored, and ranked based on the evaluation and ranking criteria included in this RFP. A minimum scoring requirement (70%) is necessary for proposals to be eligible for consideration.

Applicants whose proposals are recommended for funding will be notified and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's RFP and proposal submission packet, please visit http://www.tsswcb.state.tx.us/managementprogram or contact TJ Helton at (254) 773-2250 ext. 234. All proposals must be submitted electronically (MS® Word) using the template provided. Submit proposals to thelton@tsswcb.state.tx.us and mail 8 hardcopies to the address below. Proposals must be received electronically by 5:00 p.m. CST, November 19, 2010 to be considered. Hardcopies must be received within a timely fashion after electronic submission (by November 24, 2010).

Address Proposals to:

Texas State Soil and Water Conservation Board

Attn: TJ Helton

Mailing Address

PO Box 658

Temple, TX 76503-0658

Physical Address

4311 South 31st Street, Suite 125

Temple, TX 76502-3354

FY2011 GRANT TIMELINE

Issuance of RFP October 8, 2010

Deadline for Submission of Proposals November 19, 2010

Proposal Evaluation by TSSWCB November 2010 - January 2011

Notification of Selected Proposals/Unsuccessful Applicants February 2011

Work with Applicants to Finalize Selected Proposals February - April 2011

Submit Grant Application to EPA May 2011 Contract Award August 2011

TRD-201005567
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: September 27, 2010

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Denver City and Yoakum County, through their agent the Texas Department of Transportation (TxDOT), intend to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Denver City Airport during the course of the next five years through multiple grants.

Current Project: City of Denver City and Yoakum County. TxDOT CSJ No.: 1105DENVR. Engineering/design for rehabilitate stub TW, rehabilitate apron, rehabilitate RW 8-26, rehabilitate RW 4-22, mark RW 4-22, replace LIRL with MIRL RW 4-22, install rotating beacon and lighted windcone, rehabilitate hangar access TWs and mark RW 8-26.

The HUB goal for the current project is 8%. TxDOT Project Manager is Clayton Bridwell.

Future scope of work for engineering/design services within the next five years may include, but are not necessarily limited, to the following:

1. Rehabilitate auxiliary apron.

The City of Denver City and Yoakum County reserve the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, and project narrative, are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Denver City Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a

previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **November 2, 2010, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions, please contact Clayton Bridwell, Project Manager.

TRD-201005613
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 29, 2010

♦ ♦ ♦

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Mesquite, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Mesquite. TxDOT CSJ No.: 11CTMSQTE. Scope: Provide architectural/engineering services to design and construct an Air Traffic Control Tower and associated appurtenances at Mesquite Metro Airport.

There is no DBE requirement. The TxDOT Project Coordinator is Michelle Hannah; TxDOT Project Engineer is Stephanie Kleiber, P.E.

To assist in your proposal preparation the criteria, 5010 drawing, and most recent airport layout plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Mesquite Metro Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **November 2, 2010, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of architectural/engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT, extension 4518. For technical questions, please contact Michelle Hannah or Stephanie Kleiber, at 1-800-68-PILOT.

TRD-201005614
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 29, 2010

♦ ♦ ♦

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Stephenville, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Stephenville Regional Airport during the course of the next five years through multiple grants.

Current Project: City of Stephenville. TxDOT CSJ No.: 11HGSTVLE. SCOPE: construct a 12-unit aircraft hangar building with hangar access paving and associated appurtenances at Stephenville Regional Airport.

There is no DBE goal. TxDOT Project Manager is Stephanie Kleiber, P.E.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Extend Runway 14-32

2. Airport Development Plan

3. Rehabilitate and mark Runway 14-32

4. Rehabilitate connecting taxiways

5. Relocate Fuel Farm

6. Relocate AWOS

The City of Stephenville reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Stephenville Regional Airport." The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Ten completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **November 2, 2010 at 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-201005615
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 29, 2010

♦ ♦ ♦

Notice of Public Hearing - Non-Radioactive Hazardous Materials Routes

In accordance with 43 TAC §25.103(g), the Texas Department of Transportation will hold a public hearing to receive comments on a proposal received from the Brownsville and Harlingen-San Benito Metropolitan Planning Organizations to create designated Non-Radioactive Hazardous Materials (NRHM) routes in Cameron County.

The recommended routes contain both travel directions of the following roadways: US Hwy 77 from Harlingen's northwestern city limits to the southeastern city limits of San Benito; SL 499 from US Hwy 77 to FM 106; FM 106 from SL 499 to the central-east city limits of Harlingen; US Hwy 83 from Harlingen's central-west city limits to US Hwy 77; FM 509 from the southwestern city limits of Harlingen to FM 106; from FM 509 to the southeastern city limits of San Benito (at US Hwy 77/83); US Hwy 77/83 from the Brownsville northwest city limits to the Veterans International Bridge at Los Tomates; and SH 550 (FM 511) from US Hwy 77/83 to the Port of Brownsville.

The hearing will be held at 9:00 a.m. on November 4, 2010 at the following location:

Texas Department of Transportation

Dewitt C. Greer State Highway Building

125 East 11th Street

Ric Williamson Hearing Room

Austin, Texas 78701

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 8:30 a.m. Oral and written comments may be presented at the public hearing or written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Carol T. Rawson, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments is 5:00 p.m. November 12, 2010.

Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

TRD-201005547
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 24, 2010

♦ ♦ ♦

The Texas A&M University System

Renewal of an Existing Consulting Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, The Texas A&M University System (TAMUS) has renewed an existing contract for communication consulting services. The consultant will perform speech writing duties for the Chancellor of TAMUS.

The name and address of the consultant is as follows: Eric Bearse of Bearse & Company, LLC, 919 Congress, Suite 1500, Austin, Texas 78701.

TAMUS will pay an amount not to exceed $72,000. The contract will begin on September 27, 2010 and end on September 27, 2011.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to TAMUS, no later than September 27, 2011.

Any questions regarding this posting should be directed to: Don Barwick, HUB and Procurement Manager, Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Suite 1273, College Station, Texas 77845, voice: (979) 458-6410, e-mail: dbarwick@tamu.edu.

TRD-201005516
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: September 23, 2010

♦ ♦ ♦

Request for Proposals

RFP-11-0001 Feasibility Study and Market Analysis

Texas A&M University, College Station, Texas is accepting submissions and intends to enter into an Agreement with a consulting firm to provide a feasibility study and market analysis for the placement of a hotel and conference center on the Texas A&M University campus. The Request for Proposals document may be obtained by contacting: Rex E. Janne, Executive Director of Procurement Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-3013, e-mail r-janne@tamu.edu.

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Proposals must be received on or before 2:00 p.m., November 1, 2010.

TRD-201005509
Donna Harrell
Buyer
The Texas A&M University System
Filed: September 23, 2010

♦ ♦ ♦

Texas Water Development Board

Request for Applications for Flood Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of applications leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program. Flood protection planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of the flood protection planning grant program is for the State to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. The flood protection planning study should also include an assessment of the environmental and cultural resources of the planning area as necessary to evaluate the flood control alternatives being considered. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration. Up to $1,000,000 has been initially authorized for Fiscal Year 2011 assistance for flood protection planning from the Board's Research and Planning Fund. Up to fifty percent funding may be provided to individual applicants, with up to seventy-five percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Six double-sided copies on recycled paper and one digital copy (CD) of a complete flood protection planning grant application including the required attachments must be filed with the Board prior to 12:00 p.m., January 20, 2011. Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Mr. Gilbert Ward at the preceding mailing address, or by email at gilbert.ward@twdb.state.tx.us or by calling (512) 463-6418. This information can also be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-201005570
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: September 27, 2010

♦ ♦ ♦

Request for Applications for Regional Water and Wastewater Facility Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) Chapter 355, Subchapter A, as amended, the submission of planning grant applications leading to the possible award of contracts for regional facility planning. This planning will evaluate and determine the most feasible alternatives to meet water supply and/or wastewater facility needs, estimate the costs associated with implementing feasible water supply and/or wastewater facility alternatives, and identify institutional arrangements to provide water supply and/or wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate regional water supply and/or wastewater facilities.

Planning grant applications may be submitted by eligible political subdivisions from any area of the state. To be eligible for funding, at least two political subdivisions must participate in the proposed study and more than one service area must be evaluated for feasibility of regional facilities. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. Note: Studies related to the development of regional water supply plans, the evaluation of water supply alternatives, and drought response plans, as described in Texas Water Code, §16.053, are not eligible for funding under this Request for Applications. The purpose of this program is for the state to assist local governments to prepare plans that document water supply and/or wastewater service facility needs, identify feasible regional alternatives to meet water supply and/or wastewater facility needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and/or regional wastewater treatment plants and collection systems. The study should, at a minimum, include the following steps:

1. Develop Problem Statement; 2. Inventory Existing Conditions and Forecast Future Conditions and Needs; 3. Formulate Planning Alternatives; 4. Evaluate and Compare Each Planning Alternative; and 5. Select Best Planning Alternative.

A water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections. Discrete phases to implement regional water supply and/or wastewater facilities to meet projected needs will be identified. Environmental, social, and cultural factors for possible solutions identified in the plan should be evaluated. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and/or wastewater system component, including the water conservation program.

Description of Funding Consideration. An amount not to exceed $1,000,000 has been initially authorized for Fiscal Year 2011 assistance for regional facility planning from the Board's Research and Planning Fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right not to award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Six double-sided copies on recycled paper and one digital copy (CD) of a complete regional facility planning grant application including the required attachments must be filed with the Board prior to 12:00 p.m., Monday, December 20, 2010. Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231 Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information may be directed to David Meesey at the preceding mailing address, by e-mail at david.meesey@twdb.state.tx.us or by calling (512) 936-0852. More information can be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-201005569

Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: September 27, 2010

Request for Statements of Interest for Federal Funding Under the Texas Environmental Infrastructure Program

The Texas Water Development Board (board) requests Statements of Interest (SOIs) from interested political subdivisions under the Texas Environmental Infrastructure Program (TEIP). "Political subdivision" includes a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party. Contingent on congressional appropriations for federal fiscal year 2012, up to $40,000,000 will be available through TEIP for water resources projects identified by the board.

The board's objective is to facilitate construction of projects (or discrete increments of projects) to meet near-term water supply needs. Pre-construction activities are also eligible for TEIP assistance, but preference will be given to those SOIs that support construction of water supply within a reasonable time frame.

TEIP Background

The TEIP is administered by the U.S. Army Corps of Engineers (USACE) under Public Law 110-114, the Water Resources Development Act of 2007 (WRDA). TEIP authorizes the USACE to provide financial assistance to develop water supply projects in Texas, including implementation of water management strategies recommended in regional water plans and "Water for Texas," the Texas State Water Plan and not otherwise authorized under WRDA. This assistance is to be provided "in the form of planning, design and construction assistance for water-related environmental infrastructure and resource protection and development projects in Texas, including projects for water supply, storage, treatment and related facilities, environmental restoration, and surface water resource protection and development."

Funding Limitations

The $40,000,000, if appropriated, will be dedicated to a cost-sharing program. The federal share of a project cost will be 75 percent, which may be provided in the form of grants or reimbursements of project costs.

(a) For a project constructed by USACE. The non-federal share of 25 percent may be provided in the form of cash, materials and in-kind services, including planning, design, construction and management services, as determined to be necessary for the project that are initiated following execution of a Project Partnership Agreement with USACE. Therefore, design work carried out before the date of the project funded under WRDA will not be considered for credit toward the non-federal share. Additionally, the non-federal share may be in the form of a credit for the value of land, easements, rights-of-way, and relocations required for construction of the project. The eligible applicant may apply for funding of the non-federal 25 percent share through one of the board's non-federal financial assistance programs.

(b) For a project to be constructed by a non-Federal entity. The federal share of project costs will be provided through a reimbursement of 75 percent of the total project cost upon completion of the project. The non-federal share may be provided in the form of cash, in-kind services, including planning, design, construction, and management services, as determined to be necessary for the project. However, work eligible for

credit or reimbursement on a project may not be initiated until a Project Partnership Agreement has been executed with USACE.

Contingent on congressional appropriations, funds will be distributed directly from the USACE to the political subdivision. Entities receiving TEIP funding will be required to comply with all applicable federal laws for the funded project.

This solicitation initiates a new round of SOI priorities for consideration of funding exclusively out of fiscal year 2012 congressional appropriations. Therefore, TEIP project SOIs submitted for previous fiscal years will not be considered for this cycle unless a new SOI is submitted in response to this solicitation.

Eligibility and Ranking

The board's executive administrator will prioritize SOIs on the basis of the criteria specified herein and will forward the prioritized list of SOIs to Congress and USACE for consideration in fiscal year 2012 congressional appropriations. The list will also be posted to the board's website and provided to all political subdivisions that submit a SOI.

The ranking criteria to be used by the executive administrator are as follows:

1. Whether the proposed project is recommended in the 2011 regional water plans, which form the basis of the State Water Plan due to be published in 2012;

2. Whether the proposed project is for new water supply in the near-term;

3. Construction projects are preferred over pre-construction projects;

4. Date for which the project is intended to meet needs;

5. Projected completion date;

6. Status of federal 404 permit authorization and other relevant state and federal permits; and

7. Other benefits.

General Requirements

Political subdivisions otherwise eligible for funding from the board should submit an SOI to the email address below no later than 5:00 p.m., Central Standard Time, on December 10, 2010. Responses should be limited to ten pages, excluding necessary maps.

The SOI shall contain the following information:

1. Name, address and geographical jurisdiction of the project sponsor(s);

2. Name, phone number and email address of main points of contact for the sponsor;

3. Name of project as identified by page number in the applicable 2011 Regional Water Plan;

4. Description of the physical boundaries of the project and the geographic area and region to be served by the project; the congressional district in which the project is located;

5. Brief description of overall project and estimated total cost of entire project;

6. Brief description of the project or portion of the project (i.e., usable increment) for which federal funding is requested under the TEIP, to include the following:

a. General budget of cost categories, with a breakout of amounts to be funded with federal funds and non-federal funds in fiscal year 2012;

b. Identification of source of non-federal funds; and

c. Estimated date of completion of project or usable increment; and

Note: If requesting funding for a discrete portion of a project, the portion must be a 'usable increment', meaning that the funded portion will provide benefits once it is completed.

7. A resolution from the governing body of the political subdivision approving the project and committing to meet non-federal cost share requirements. If, due to the schedule for governing body meetings, the applicant cannot provide a resolution by the December 10, 2010 deadline for SOI, then the board will accept a letter from the chair or chief executive of the governing body stating the intent to request a resolution at the next regularly scheduled meeting (must include date of the meeting) of the governing body.

Submission of SOI and Questions

The SOI shall be submitted by electronic mail to:

Dave Mitamura

Texas Water Development Board

E-mail: *dave.mitamura@twdb.state.tx.us*

Telephone: (512) 463-7965

The SOI must be received by 5:00 p.m., Central Standard Time, December 10, 2010.

TRD-201005540
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Filed: September 24, 2010

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 35 (2010) is cited as follows: 35 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*